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LEGAL AND LEGISLATIVE COMMITTEE

August 11, 1998
5:00 P.M.

The meeting of the Legal and Legislative Committee was called to order by Councilman Pierce, Chairman, with Councilmen Eaves, Hurley, Rutherford, Lively, and Crockett being present. City Attorney Randy Nelson, Management Analyst Randy Burns, and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Ken Hays, Adm. Boney, Chief Coppinger, and Donna Kelley.

CHARTER AMENDMENTS FOR NOVEMBER BALLOT

Chairman Pierce stated that Attorney Nelson had asked for final touches on the amendments and turned the meeting over to him.

Attorney Nelson stated that he was glad he did; that he had made some small changes, and he needed the Council's direction on some of the amendments--the one concerning the Personnel Review Board and the one concerning provisions as to State, County, and Federal officials being eligible to run for a city office.

Councilwoman Hurley, who had introduced the latter amendment, stated that she never said "officials"; that it was to be employees of the State and Federal governments; that it could be amended and voted up or down.

Councilman Lively stated that he thought if we included the County employees that we could be "opening" something up.

Attorney Nelson stated that he had prepared an alternative version where the only one prohibited would be county officers; another version which repeals the whole thing; and the original one he drew up

striking the Federal and State and leaving in Hamilton County.

Councilman Lively suggested labeling the versions (a), (b), and (c) so that Council members could keep up.

At this point Councilwoman Hurley stated that she did not include the County; however she did not think the three governments would be any more in conflict than people employed by Provident, IBM, or General Mills. She stated she did share the concern of an individual wearing two "elected" hats. She stated that Councilman Crockett had moved to include elected officials, as well; that Councilman Swafford had asked that the County be included. She stated she felt it should be employees but not elected officials; that the Council could vote it up or down or amend; that she was in favor of employees but not elected officials.

Chairman Pierce questioned if this eliminated city employees from running for a city elected position. Attorney Nelson stated that we had not talked about that but added that a city employee could not pass on a Budget for the City when he would be drawing a salary. Chairman Pierce stated that this was confusing to him at this point; however he did not want to hold the process up and suggested leaving this open for discussion at a later time; that the Council go ahead and put it on the agenda now but leave it open for discussion next week as we had three Council members out tonight.

Councilwoman Hurley questioned if the Council could vote on this the following week. Attorney Nelson responded that it had to be voted on tonight for the November ballot. Councilman Eaves asked if we could put it on the agenda tonight without a caption change.

Councilman Crockett stated that he was having a problem with understanding if the County was a problem and asked Attorney Nelson's opinion. Attorney Nelson responded that he personally thought it would be a problem; that historically the city had had a number of conflicts with the county and pressure could be put on employees working for the county who held city positions; that when this had become an issue in the past, it had been found in the Charter that it was valid to exclude county employees, and there was a good reason for this.

Councilwoman Hurley reminded everyone that she did not have the county in.

Councilman Crockett maintained that he thought you could make the same argument with anyone.

Councilman Eaves added that we could very likely be in the position to sue the county.

Councilman Crockett responded that if we sued the county, and the Councilmember who was a county employee had a conflict, then they could recuse themselves from voting; that this had been done in the past where there was an implied or direct conflict of interest.

Councilman Lively stated that he thought it would be much "purer" if we just included the Federal and State--that the chances of conflict

would be less.

Councilwoman Rutherford stated that she wished this issue had not been brought up, and she would like more time to think about it and suggested dealing with this in another election.

Councilman Crockett indicated that he thought there was a way of compromise; that we had three members absent tonight; by next week, we should have a version that everyone can agree on. He suggested that we accept alterations to the proposed amendment at the Legal and Legislative Committee meeting next week to be voted on in the November election; that if everyone is not clear by next week, then it can't go on the ballot. Councilman Crockett added that there might be the chance that it would be more difficult to deal with in the Year 2000 than it is right now--that this could be real problematic in an election year and could reflect on the Council members if they tried to have an amendment passed dealing with who can and cannot seek a seat on the City Council--the very seat they might be seeking, and it could be perceived all sorts of ways. He suggested dealing with this now and not in the year 2000.

Chairman Pierce stated that we had other amendments to discuss and asked that the committee move on.

Councilwoman Hurley pointed out that there is a lot of brain power in public employees, which is one of our largest pools of employment; that she did not believe she understood the Council members that thought this was confusing; that whether we agree with including the elected officials as well, this (City Government) is the only body that has this restriction, and stated she was not certain why the people should not be able to decide this in an election. She reiterated that we were the only body with this restriction. She asked how long this had been a Charter provision, and was told by Attorney Nelson "forever". She pointed out that this was not part of our recent new government; that people working for the public sector should be permitted to run.

Councilwoman Lively stated that if it did not include the County, he could support this.

Councilman Crockett suggested that we clear this up and go forward; that if including elected officials presents a problem, then pull that part off the table. He noted that if we exclude the County, then every school teacher is prohibited from running, but if that is a problem....stating that his position was no restrictions at all would be the least argumentative way and that was why he included elected officials; that he felt taking off the County would be too exclusive.

Councilman Lively maintained that including the County would not be a good idea because of all the sensitive issues.

Councilman Crockett suggested that the Council vote on this for first reading and "hash" it out between now and next week because he felt he could not support this in the year 2000; that this would give the Council one week to look at this and next week we would have a full body of colleagues.

Councilwoman Rutherford stated that she guessed she could think about this in 30 minutes!

Attorney Nelson questioned the Council if they were wanting to pass something tonight that could be amended. Councilwoman Hurley suggested not including officials and not including the County. She reiterated that we were now the most exclusive form of government as it relates to this issue.

Attorney Nelson read what he felt the committee was asking him for. Councilman Crockett moved to put this on tonight's agenda and have it voted up or down. This was seconded by Councilwoman Hurley.

Councilman Lively verified that we were excluding County employees and elected officials; stating that he thought the County should be excluded because the experience had been in the past that we were on the verge of suing the county.

Chairman Pierce noted that there seemed to be continuing confusion among council members and questioned how this could ever be passed on referendum. He stated that the City had never put this many Charter changes on the ballot; that he would campaign to vote "no" on the ones he did not support; that since it would be so confusing for the voters, he would have to suggest just voting "no" on all of them.

The next amendment discussed was the Pension Review Board. Attorney Nelson questioned how the Council wanted this formed.

Councilman Crockett suggested a caption that would be generic and suggested dealing with this on first reading tonight; that the cleanest thing to do would be to have it voted on tonight on first reading and then have another Legal and Legislative committee meeting next week and "clean" it up.

Chairman Pierce stated that the ones that pass on first reading

tonight can be "cleaned" up by next week.

Attorney Nelson explained that the way it was written, the Mayor would appoint members and the Council would approve them--that it would be a Citizens' Review Board. He questioned how many members the Council wanted.

Councilwoman Hurley responded that she thought it should be a five-member board. Attorney Nelson agreed, stating that a nine-member board would make it political.

Adm. Boney questioned why the committee had to specify a number at this time; that the purpose of these amendments was to take binding things out of the Charter; that the details could be left to Ordinances. Attorney Nelson stated that at some point someone would have to decide who hears these cases.

The third amendment discussed was the requirement of part-time employees in relation to pension benefits. Ms. Kelley was present and noted that some part-time people work 2 hours and some 37 hours, which is a broad spectrum. She stated that at this time they were asking that this be removed from the referendum.

The fourth amendment dealt with a small change--the position of City Treasurer was moved from "Abolishing the Charter Appointment" position in the caption to "Deleting Certain Antiquated Provisions Relating to the Appointment" position in the caption--it was just moved from the middle part of the caption to the bottom.

REPLACING COUNCIL MEMBER

Councilman Crockett brought up the fact that we have a situation where a Council member has been elected to another position and stated this would be discussed in committee meeting next week; that the City Attorney was researching this as to which elections are available and which ones are legal and the question about the interim appointment. He stated that we would have this information by next Tuesday; that with three members out, it was not appropriate to discuss this at this time, and it would be brought up in committee next week.

Chairman Pierce noted that the question was were we going to appoint someone or leave the position open for 60 days.

Councilman Crockett stated there were a lot of options, and we were getting basic research done.

Councilwoman Rutherford asked when Councilman Swafford would be sworn in to his new position. Councilman Crockett responded September 1st.

ACQUISITION OF PROPERTY AT LONG AND WEST 26TH STREETS

Chairman Pierce called the committee's attention to Resolution (e) that had been added to the Agenda; this had been held from 7-7-98 and 7-14-98, and he stated he supported putting this back on the agenda at this time; that Councilman Hakeem also agreed to this; that the asking price had been \$44,000, and it was back on the agenda with an asking price of \$20,000, and he hoped that it could be approved tonight.

Councilwoman Rutherford stated that she spoke to Larry Zehnder about this today; that she had made the motion to delay this until the Parks and Recreation Study was presented; that a lot of money and time in meetings had been spent on this Study, and she questioned the Council going ahead and approving this when we are this close to the Final Plan. She suggested not approving this and waiting until the Plan is presented.

Councilman Eaves asked when this would be? Councilwoman Rutherford responded that it would be presented to the public on September 17th at 6:30 P.M. at the Tivoli Theater--that the Plan would be unveiled at this time; that she did not know when we could have a committee meeting on this. She questioned why have a Study such as this if we are going ahead and take action anyway.

Chairman Pierce stated he thought we were in a win-win situation; that originally the property was appraised at a commercial rate; that Parks and Recreation had made the recommendation to accept this appraised price; that he did not think the City could go wrong at \$20,000.00.

Councilwoman Hurley stated that she appreciated Councilwoman Rutherford's point of view, but we did have ongoing actions in relation to Parks and Recreation, and she felt this was a special situation; that the owner is out of the city and had been more than generous in meeting the city's price, and she thought this was an exception; that we had been sustaining the park, and she hoped we could find a way to take advantage of this opportunity, as she felt this park was important to us.

Attorney Nelson stated that he had spoken with Joe Gaston, and he had indicated to him that he wanted to get this behind them and would put

\$20,000 on the table tonight, but he would not agree to this price if they had to wait on the Study.

Councilman Crockett stated that he agreed with Councilwoman Rutherford in principle, but this is an operating park and a constituency of people want it and are willing to work in it, and at this price we are not doing anything new; that on a weekly basis we do things of this magnitude, and it is not a big deal.

Councilman Lively stated he thought \$20,000 was reasonable, but it did bother him that the price was negotiated at \$44,000, and after we balked, we were getting it for \$20,000; that this was sending a message, and this did bother him.

Councilwoman Rutherford stated she would support this being on the table tonight; however she stated it might be the recommendation of the Study to close some of the parks and centers; that she certainly had no objection to this park remaining; that if this is a "now or never" price, she would support it. She did, however, question the message we were sending to civic-minded people who serve on committees and had spent hours working on this Study and questioned if we were sending the message that their efforts don't count.

Councilwoman Hurley stated that this was a nice discussion, but this was a specific circumstance and questioned whether we should hold this up until everyone reaches a consensus on which parks to close.

Councilman Lively moved that we accept this offer.

Mr. Hays stated that Administration fully supports going ahead with this.

Councilman Crockett stated that all of the Council members are interested in the Parks and Recreation Task Force and a lot of time has gone into this and no one on this Council wants to override the findings of a citizens' committee. He added that in the case of this offer money is not an issue with these folks; that they have given us this park for years, and it is not the same as someone out negotiating a price. He did not want to leave a negative feeling towards the Gastons.

The meeting adjourned at 5:30 P.M.

