

LEGAL AND LEGISLATIVE COMMITTEE

July 23, 2002

3:00 P.M.

The meeting of the Legal and Legislative Committee was called to order by Councilman Benson, Chairman, with Councilmen Page, Taylor, Littlefield, and Franklin present. Councilmen Hakeem, Pierce, Robinson and Lively joined the meeting later. City Attorney Randall Nelson and Shirley Crowover, Assistant Clerk to the Council, were also present. Attorney Mike McMahan joined the meeting later.

Others present included Jerry Pace and Mike Compton.

NOVEMBER CHARTER CHANGES

Chairman Benson turned the meeting over to Attorney Nelson. Attorney Nelson explained that we have the opportunity twice every two years to make changes to the Charter, and this is the second time this year. The next election will be August of 2004. The changes for the November ballot would have to be adopted on first reading by August 13th.

Councilman Page verified that the changes the committee previously went over would be adopted on August 1st and that the changes that would be discussed today would come up in the November general election.

Attorney Nelson explained that Chattanooga is a Home Rule municipality, and the only way the Charter can be amended is by vote of the people; that the City adopts an Ordinance and after it becomes effective it is advertised and voted on the next general election.

Chairman Benson verified that the August election changes are basically clean-up but that the changes discussed today are substantial changes. Attorney Nelson explained that to some degree the changes that will be discussed today are also housekeeping, too, in that they are antiquated and no longer needed.

Councilman Page asked how these changes became known as needed changes and questioned if these were the changes that were mentioned when the committee went through the Charter the first time and were the substantial changes that we had already talked about. He wanted to know if we had already gone over these in committee. Attorney Nelson explained that some we have and some we have not. He mentioned that in dealing with no fine exceeding \$50.00 that there would be a measure on the November ballot amending the State Constitution to do away with the \$50.00 and let the Legislature set the maximum amount, and then we will not need this \$50.00 limit.

Councilman Benson asked how the Council would know if this was going to pass. Attorney Nelson explained that there would be no harm in taking this out.

The first change that Attorney Nelson addressed was on **Page 6, Section 2.9, *Authority to subscribe to stock in railroad or turnpike companies***: Attorney Nelson stated that this could be eliminated because it was not needed.

Section 2.12, on the same page, *City prohibited from operating off-street parking facilities*, states that **“The charter of the City of Chattanooga and all amendments thereof be and they are hereby amended so as to provide that the City of Chattanooga shall not engage and is hereby prohibited from engaging in the ownership, establishment, furnishing, leasing, maintenance or operation of any off-street public parking business or off-street parking facilities, including but not limited to parking lots, ramps, garages, parking meters and any other equipment and facilities necessary or incidental to the off-street parking of motor vehicles, as a “public works project” as defined in Section 6-1602(7-36-102) of the Tennessee Code Annotated.....If necessary, in order to finance the construction of the facilities authorized in the foregoing section (refer to Charter), only revenue bonds shall be issued as is otherwise provided by law.** Attorney Nelson explained that we get away with Parking facilities downtown because they are in conjunction with a city facility—Electric Power Board, Chattanooga, CARTA, City Hall, etc. Attorney Nelson stated that we could leave this section in or at the bare minimum, take out the last sentence.

Councilman Littlefield noted that this had no practical effect. Councilman Page asked if there was any reason to have this in the Charter. Attorney Nelson pointed out that some of the downtown plans say there is a lack of parking. Councilman Littlefield suggested a separate ordinance and a separate referendum. Chairman Benson asked if the whole section could be eliminated.

The next section was on the same page, **Section 3.1, *Eligibility for office***. **No person, while hold any office or employment under the federal, state or county government, except the office of notary public, shall be eligible to any office under said city government. . . .** Attorney Nelson asked the committee to remember the situation with Councilman Ron Swafford leaving employment with the City because he could not serve in two offices. He noted that the question had been asked if this affected John Lively, and the answer was “no”; that if he was elected as State Representative, he had to make a choice right then of which position he wanted to maintain; that the State Representative position begins at election and runs four years. He went on to explain that this provision in the Charter deprives anyone working with TVA or UTC from being a candidate for a city office or on the City Council; that if they were elected, they would have to make a choice.

Councilman Page stated that he was not sure this should stay in.

Councilman Pierce was in favor of it remaining in the Charter, stating that he did not think double-dipping should be.

Chairman Benson pointed out that right now a TVA employee can't be on the Council but an Electric Power Board employee can—that a TVA employee can't serve. Attorney Nelson reiterated that a state, county, or federal employee can't serve.

Councilman Pierce asked what the significance would be in allowing a person to serve in both positions. Attorney Nelson noted that the City Council is a part-time position. Councilman Pierce stated that all elected positions are part-time and questioned why we wanted to make this more complicated.

Councilman Littlefield mentioned that when a member of the County Commission became a State Legislature he had a choice of whether he wanted to maintain both positions; that it is constitutional for the commission form of government but not for the council form. He, too, mentioned that a TVA employee would be prohibited. Attorney Nelson mentioned that a professor at UTC could not serve as a Councilperson.

Councilman Pierce questioned why this kept “popping up”; that he felt that it was a good thing and mentioned that when he ran there was a question of whether a bail bondsman could be a member of the Council and whether he could continue his bond business. He stated that the ruling came back in his favor.

Councilman Littlefield reminded everyone that we were not changing this, just deciding whether it should be put to the vote.

Councilman Taylor suggested that maybe it could be modified with a distinction between a person that held an office and just an employee; that we could say if they were an employee they could run for City Council but if they were an elected official they could not run for another office.

Attorney Nelson stated that he had a duty to uphold the Charter—that a person could be both a County Commissioner and a City Councilman if this were stricken.

Councilman Page stated that he was not sure we should make any objectionable, controversial changes.

Chairman Benson felt that the Council should not limit themselves in November to just housekeeping matters; that this was the time to see if “tinkering” is needed. Councilman Franklin agreed, stating that the August ballot may be for housekeeping but that in November there is an opportunity for “tweaking” this; that Ron Swafford’s scenario of holding both a county and city position was one thing but talking about a TVA employee or non-political scenario was different. He suggested modifying this and to be sure that we do not run into some conflicts of interest.

Chairman Benson pointed out that if John Lively is elected as State Representative that one of the people in contention for his present position works for county government. He asked if it were the consensus that this should be addressed in November.

Attorney Nelson stated that the Council did not have to decide this right now. Chairman Benson stated that he was gathering that there was not too much support for this right now. Attorney Nelson noted that he was not encouraging the Council to adopt anything.

Section 3.1.1 on Page 7, *Employees and appointed officials required to be residents or legally qualified voters, All employees of the city shall either be registered voters in the State of Tennessee, or eligible to vote in the State of Tennessee, except that those employees currently employed (as of January 18, 1990) and living outside the State of Tennessee shall be exempted from this provision,* was discussed.

Councilman Littlefield stated that this meant all employees should be registered or eligible voters in the State of Tennessee. He mentioned a case where a city employee inherited property in Georgia and wanted to move there but could not.

Chairman Benson stated that his domicile had to be in Tennessee.

Councilman Hakeem asked if we were going to leave this as it is. Councilman Littlefield stated that we could put a question mark by it. He explained that situations where employees lived outside the State that existed before this change were grandfathered in.

Councilman Page stated that this was ludicrous to him; that a person living in Nashville could be a Chattanooga city employee but a person living in North Georgia could not.

Councilman Hakeem stated that a person living in Georgia would work in Tennessee and take his money back to Georgia; that this hurts us like the sales tax.

Councilman Taylor noted that a previous mayor addressed something of this nature, when he stated that employees had to live within the city limits. Attorney Nelson explained that this mayor required that all Fire and Police personnel live within the City of Chattanooga. Councilman Littlefield pointed out that something of this nature could still be handled in personnel policy—that it was not a hard and fast rule in the Charter.

Councilman Hakeem asked how it would benefit us to change this. Councilman Page mentioned talent and expertise of people living outside—that we needed to be inclusive rather than exclusive; that he considered North Georgia to be our market area. Councilman Hakeem questioned what message this was sending—making dollars in Chattanooga and going into Georgia to spend it.

Councilman Littlefield mentioned two well paid employees from Chattanooga who went to work in Catoosa County.

Chairman Benson mentioned that in 1958 the City of Chattanooga had an engineer who moved to the county and who kept his city job by turning in the address of a friend; that the city could not afford to lose him.

Councilman Hakeem stated that he thought we could get quality people living in Chattanooga.

Councilman Littlefield stated that we would put a question mark by this; that he did not feel strongly about it either way; that he had to tell a “poor soul” in stormwater that he could not move down to Georgia.

Councilman Page asked if this was enforced, and the answer was “yes”.

Section 4.4 on Page 19, *Court costs; litigation tax not required* was set long ago at \$.25 and \$.75 and in Attorney Nelson’s opinion probably needed to come out or amended upwards. Councilman Littlefield suggested taking it out, noting that he hated to put numbers in the Charter. Attorney Nelson stated that his idea was to chop off two paragraphs and pick up with **‘In the event the fine is not paid and the defendant is sent to the workhouse, the city court clerk shall certify to the warden of the city workhouse the amount of costs in each case in addition to the fine imposed by the court.’**

Councilman Hakeem asked if we would keep the different categories intact but just not give an amount. **Section 4.5 on the same page, *Sessions of city court; signing of minutes and process***, in the opinion of Attorney Nelson could be done away with, but he suggested talking to the City Judges first.

Attorney Nelson directed attention to **Section 5.2 on Page 22, *Primary elections-Required***. At this point Councilman Pierce questioned what it would cost to put all of this on the ballot. Attorney Nelson stated that it varies. Councilman Pierce stated that he thought that this would confuse the voters. Attorney Nelson stated that the question of cost could be directed to Jim Boney or Daisy Madison. Councilman Pierce again mentioned the confusion of people reading these Charter changes. Councilman Littlefield stated that we would give people a choice. Councilman Pierce stated that we would have the lottery on the November ballot.

Section 5.9 on Page 23, *Same-Certification of names of two candidates receiving highest vote for each administrative post*; Attorney Nelson suggested striking “administrative”.

Section 6.93 on Page 30, *Farmers’ institute-Appropriation* and Section 6-94, *Same-Chattanooga and Hamilton County Farmers’ Institute Commission*, Attorney Nelson suggested eliminating both.

Section 6.167 on Page 36, *Appropriations for, use of tort liability fund*, needs to be re-written.

Chapter III. CITY-COUNTY HISTORICAL COMMISION, Page 41, was proposed as a vehicle for the Museum of Regional History, according to Councilman Littlefield, who suggested that this be left in.

Section 11.6 on Page 48, *Veto power of mayor-Generally*—Attorney Nelson noted that we visit this from time to time; that this is a power without any power because the veto can be over-ridden by 2/3 or the majority. Attorney Nelson explained that the only time a veto has any “sting” is right at the end of a term if a mayor vetoes and the Council has no time to reverse it. Councilman Littlefield pointed out that the mayor has a week to try to change someone’s mind. He noted that this had been talked about before. Councilman Benson stated that he thought this might be giving the mayor a “bully pulpit”. Attorney Nelson stated that he would leave a question mark by this.

Title 12, PLANNING, ZONING AND DEVELOPMENT on Page 50 is a duplication of State Law and State Law actually gives us more flexibility. Councilman Littlefield was in favor of taking this whole section out. Attorney Nelson noted that we have to live up to the tougher of the two; that it needs to be read carefully. Councilman Littlefield stated that we usually follow State Law and don’t look at the Charter. Attorney Nelson pointed out that this calls for a City Planning Commission. Chairman Benson asked if we were talking about eliminating the whole section, and the answer was “yes”.

Section 13.8, Page 54, *Gratuities prohibited*; Councilman Pierce stated that Councilman Benson was an expert on this. Attorney Nelson noted that firemen have to come and report donuts. Attorney McMahan suggested putting a dollar amount in; however Councilman Littlefield was not in favor of putting a number in.

Mr. Pace, going back to persons living outside the city or state, questioned if this applied to joint city-county agencies. Attorney McMahan noted that former City Attorney Gene Collins had ruled that they were not governed by the same thing as city employees.

Attorney Nelson stated that these were provisions that he had identified in the Charter. He stated that this was also the time for any powers that the Council wanted to add, such as an economic development tool or a neighborhood organization tool that needed to be added.

Councilman Benson asked when a City Council position was defined as part-time. Attorney Nelson responded when we went to a Mayor and Council form of government. Councilman Pierce noted that we could make it full-time but the salary would remain the same. Councilman Benson still questioned who says this is part-time.

Councilman Taylor asked about adding powers in regards to neighborhood associations, stating that he thought this was the proper way to go. Attorney Nelson stated that this could be implemented by Ordinance.

Chairman Benson stated that this gives us a lot to think about.

Councilman Hakeem asked where in the Charter the Council's salary is addressed. It was pointed out that it is on **Page 38, Section 8.12.**

The meeting adjourned at 4:00 P.M.