

LEGAL AND LEGISLATIVE COMMITTEE

August 12, 2008

3:20 P.M.

Chairman Benson called the meeting of the Legal and Legislative Committee to order with Councilpersons Bennett, Berz, Rico, Gaines, Shockley, Robinson and Page present. Councilman Pierce joined the meeting later. Also present were City Attorneys Randall Nelson and Mike McMahan and Shirley Crownover, Assistant Clerk to the Council.

Others present included Dan Johnson, Daisy Madison, Stan Sewell, Chip O'Dell, Richard Beeland, Mike Feeley, Chief Williams, Chief Rowe, Lee Norris, Larry Zehnder, Frank Hamilton and a host of Firefighters.

Chairman Benson noted that this committee would be discussing Charter Amendments as relates to the Fire and Police Pension Plan and the Dual Auditor Role. He inquired of the time factor involved in any kind of proposal changing the City Charter.

Attorney McMahn stated that it would need to be brought to committee next week.

Attorney Nelson further explained that first reading would have to be on August 26th; that technically what the law says is that after the Council passes an Ordinance to do a Charter amendment, it has to be advertised in the newspaper and then voted on within 60 days, which gets us to September 5th; in order to get on the ballot immediately, the effective date would be September 2nd and first reading would have to be August 26th.

Chairman Benson verified that if we miss this date, it will be two years hence.

FIRE AND POLICE PENSION PLAN

Chairman Benson noted that this issue had been assigned to a committee, and he asked Dan Johnson to speak to this.

Mr. Johnson stated that at their last meeting, they came up with some items that would be cost effective and decided to use Segal Actuaries to come up with parameters and options and get costs; that Daisy Madison and other members met and narrowed down options; that he offered for the City to pay for the Study, the only stipulation that it would be between the City and Segal. He went on to say that the Fire and Police Pension Board did not want this, and he did not know if they were willing to pay for the Study. He continued, saying that there had been some bad communication going out and mis-statements had been made in a letter that went to all beneficiaries, and this is unfortunate; that one particular issue—they tried to get the Plan changed and changes in the Plan were not a purpose of this committee—that they were to address the DROP Plan, which was a directive of the City Council.

Mr. Johnson stated that they had called a meeting Friday week (August 22nd) based on a legal opinion, which would give a few days to react if a referendum is recommended.

Chairman Benson clarified that the committee would discuss the DROP Plan on August 22nd at 1:30 p.m. and there would be a recommendation by August 26th.

Attorney McMahan stated that this would be upon recommendation of the Trustee and an Actuarial Report as opposed to “parallel tracks”.

Mr. Johnson stated that rumors had been generated; however there was protection and there would be no change to vested members—they would be grandfathered in.

Chairman Benson reiterated that there would be a meeting on August 22nd and if the Fire and Police Pension Board want to be pro-active, they would need to be ready by the 22nd.; that a decision will be made on the 22nd and Segal will be encouraged to get back in.

Councilwoman Bennett stated that Mr. Johnson had mentioned communication—that communication was to come from his office and all would be informed, and they would try to continue this with a good chain of communication.

Mr. Johnson stated that all minutes were e-mailed out; not sub-committees.

Chairman Benson mentioned that he had heard from a widow that said they had threatened to reduce widows’ pensions.

Mr. Johnson stated that this was not an issue at all.

Danny Hill, a fireman in the audience wanted an explanation as to who is vested.

Mr. Johnson responded that this was not an issue—that there is a definition of “vested” in the Plan.

Mr. Hill had heard that under 10 years, they would not be vested and questioned this. Mr. Johnson stated there were no decisions on this—that vested was one of the options.

Mr. Frank Hamilton stated that the Board updated the City on July 24th—that they provided a timeline on the 24th.

Attorney McMahan asked if they understood they needed the information by August 26th? Mr. Hamilton stated they thought it was early September.

Councilwoman Robinson wanted to know where the mis-communication was coming from? Mr. Johnson responded “from Frank Hamilton”.

One of the firemen present wanted to know why it was being said that this might have to wait two years?

Attorney Nelson explained that this can only be changed in a State General Election, the next one after this being August of 2010.

Attorney Bill Robinson inquired as to the City Code being amended—that there was legislation in the City Code.

Attorney McMahan responded that by City Code, it has to be the recommendation of the Trustees and an Actuary.

Attorney Nelson stated that it takes two referendums—an Ordinance has to be passed, and the only way is for the Council to propose one; that the people adopt this and it is subject to the people again to change the Charter, and we are talking about two elections; there will be no questions on the Ballot in March.

Someone in the audience asked why such a rush before November—that the committee needs to get facts and wait on a decision from Segal; that they did not need to be pushed into this decision without facts.

Chairman Benson noted that they had decided nothing—that these are just the deadlines.

Another person noted that this decision affects thousands of people and their families.

Councilman Rico wanted to know what the hold-up on Segal was?

Mr. Frank Hamilton responded, stating that when Segal came back with a cost of \$30,000, the question arose as to who would pay for this; that they had to have a Board vote, and they notified the City—that Daisy Madison can't authorize this; that the Fire and Police Pension Board had a Special Meeting to vote on this spending; that Mr. Gardenhire said the City would pay for the Study, and they wanted to see if a reimbursement was in line (if they paid for it).

Ms. Madison stated that she hated to see this played out in this setting—that communication is a real issue; that she and Frank Hamilton had tried to work together and were charged as a sub-committee to work with the Actuary; that they met with the Actuary and Review Committee and the Fire and Police Board said the City could pay for the Study; that the City agreed, and it was okay and obviously after the meeting there was a misunderstanding as to who would pay the proposed \$30,000, and she thought the City was to pay; that they were asked to pay, and the City did agree to pay—that there was a different matter of semantics as to who Segal would report to, and the Fire and Police Pension Board felt that they needed control.

Chairman Benson stated that he would think that they would be hired by this committee and paid for by the City.

Ms. Madison stated that this was not acceptable to the Pension Board—that they wanted the consultant to report to them and not contact the Review Committee—that reimbursement was not part of this.

Mr. Bill Robinson, Attorney for the Fire and Police Pension Board, stated that the Board was willing to use Segal Company—that they had found them to be most efficient and had been the Board’s Actuary for 10 years; however the City had threatened to sue Segal Company and had had a problem with them, and the Board believed that Segal would not agree to work directly for the City, but they thought they could get them to work with the Board—that they felt like it needed to be done this way.

Mr. Johnson asked Mr. Robinson if Segal had said this? He responded “no”, with Mr. Johnson stating that the Board was just “assuming” this.

Chairman Benson stated that the next meeting would be August 22nd.

Councilwoman Bennett wanted to know when the Committee would respond back to the Council? Chairman Benson indicated August 26th.

One of the employees in the audience wanted it made known that over one-half of policemen and firemen are not vested and that this has a big impact and is no little issue.

DUAL AUDITOR ROLE

Chairman Benson referenced a draft, which is made a part of this minute material, that he termed “hot off the press” from Stan Sewell. He noted that this had been changed significantly and was prepared in an effort to bring us into compliance with the City Charter. He stated that we had been working with Stan on this and would take a look as to what he is proposing.

Mr. Sewell stated that he started out with six pages and now had it down to three and one-half; that there were a few changes.

Chairman Benson interjected that this would be dual reporting to the Mayor and Council—that presently the Charter says that the Auditor should report to the Council; that we would enact and implement something for referendum if the Council was interested in a dual approach.

Mr. Sewell began by saying that he was setting this up according to Internal Audit Best Practices and making this role independent and objective and not political; that auditing needs to be separate without fear of retribution. He went over the make-up of an Audit Committee, which would report to the Mayor and Council and would consist of the Mayor or his/her appointee, the Council Chairman or his/her appointee and one citizen appointed by the City Council. He went over the budget, which locks in a percentage of the Finance Department's budget.

Councilman Page stated that saying 25% of the Finance Department's budget is an unknown number.

Mr. Sewell responded that what they were budgeted now is right under 24% of the Finance Department's Budget, and he just rounded it off to 25%.

Councilman Page stated that the wording "at least 25%" bothered him; that he would rather it said "at most".

Mr. Sewell responded that he felt this needed to be in, but he would say it could be taken out; that he was trying to make sure that neither Body has more control; that Councilwoman Bennett had gotten this from MTAS; that this could be eliminated and we could say "up to".

Councilwoman Bennett stated that she supports this function of the Auditor, with Councilman Page saying that the Council passes the Budget anyway.

Councilman Pierce stated that he would not support this and questioned why we were concerned about money and also why the Council would want to do this; that he felt the Council was just shifting their responsibility and shifting payment to the Council or the Mayor's office.

Mr. Johnson explained that this includes the whole Budget and the reason for the percentage is that the Internal Audit Department might be the first department we would want to cut if we were trimming the Budget and the importance of this function might not be recognized.

Councilman Shockley questioned **Section 8.77** © that indicated the City Auditor shall receive a salary set by the Audit Committee—said salary shall be at least 65% of the Mayor's salary. He wanted to know if he was reading this correctly.

Attorney Nelson suggested maybe 15%, with Chairman Benson saying maybe 25% or just take this out completely.

Councilwoman Bennett urged that we did not want to see this Department go away.

Ms. Madison explained that the “at least” in regards to 25% of the Finance Department’s Budget was language to insure that there was the proper amount of money for them to function—that most of their Budget is salary; that she was concerned about a minimal amount but did appreciate the fact that the office would be funded properly; that Internal Audit would have a separate budget.

Councilman Rico suggested saying “up to” and not “at least”.

Chairman Benson stated that the question was whether to take this out or leave it in.

Councilman Shockley stated that he still questioned why the salary should be tied to the Mayor’s?

Councilman Page questioned saying “at least” 20%, stating that this could be a limiting factor; that we don’t know where the economy is going, and he would be more comfortable with taking this out.

Councilwoman Gaines stated that she had one concern and one question.

Councilwoman Berz questioned the word “sufficient” in (©), that states “*The office shall be provided a separate budget sufficient to carry out the responsibilities and functions established in this section*”. She suggested taking the sentence out because of the word “sufficient”.

Chairman Benson took a vote on taking this sentence out and received three votes.

Ms. Madison felt that saying “up to” 25% of the Finance Department’s budget would limit them, again noting that salaries were a huge part of this budget.

Councilwoman Bennett asked that the Financial Officer and Chief of Staff help us with verbiage.

Mr. Sewell agreed that we could drop this to 20%, which would be more of a safety net. (Councilman Pierce stated “Thank God” and wanted this a part of the record).

Councilman Shockley still questioned 70% to 65% of the Mayor’s salary, stating that no other employee is connected to the Mayor.

Mr. Sewell mentioned indirect influence, stating that he did not even know the Mayor’s salary; that this was just a safety net, but we could remove it. He reiterated that this was Best Practices.

Councilwoman Gaines stated that she could not imagine any salary being reduced, and she would not recommend language attaching this with the Mayor's salary.

Mr. Sewell responded that this was just a "peg".

Councilwoman Gaines noted that the Mayor's salary was tied to the State.

Mr. Sewell stated that he considered "pegging" this to the County Auditor but this would mean he would get a 40% raise.

Councilwoman Gaines still questioned this, stating that salaries and budgets are set up by most departments to see that they have enough money to operate; that this should be like any other department and as far as salary, it should be determined like any other department; that it should not be tied to the Mayor's salary.

Councilman Shockley indicated that he had a problem with the person who was drafting this and writing his own job description.

Chairman Benson stated that we asked Stan Sewell to do this.

Councilman Pierce stated that this was making this position an "untouchable".

Councilman Page stated that he would ask that Daisy Madison work on this because she knows this area and come up with some language in regards to ©; that he still thinks it is an interesting point that the Council passes on the Budget.

Chairman Benson noted that we had come a long way with this.

Councilman Page suggested that Dan Johnson, Stan Sewell and Daisy Madison get together on this, with Chairman Benson reiterating that this was "pushed" off on Stan.

Councilwoman Berz questioned **Section (B)**, mentioning a watchdog to keep all honest. She stated that the way this Audit Committee is laid out, it looks like it is politicized and questioned what happens if there are two conflicts. She stated that a quarterly meeting was useless and questioned how this committee would have any meaningful input—that she thought this was politicizing this; that she was cognizant of the intent and it did not pass the "smell test".

Mr. Sewell responded that quarterly meetings are standard; that internal auditing takes very in-depth looks, which takes time, and meeting more often, sometimes they would not have much, and it would be a waste of time; that in regards to conflicts—that this is solid protection—that the City Auditor needs to feel comfortable and this provides protection in the Audit Department; that the Auditing Department follows the “Yellow Book” independently and objectively and in major conflicts they need to be able to function without fear of retribution. He went on to say that he had added **Section 8.84 (B)**, which reads “*Nothing in this Chapter shall prevent the Council from hiring, independent of the Office of Internal Audit, an external consultant to audit or investigate the Office of the Mayor*” and **(C)**, which reads “*Nothing in this Chapter shall prevent the Mayor from hiring, independent of the Office of Internal Audit, an external consultant to audit or investigate the Council or its Members*”. He explained that when you take this whole thing in context that it works—that when you put everything together, it works; that the Audit Committee is just oversight of what they would be auditing, and it reports to the Council.

Mr. Johnson added that the Council would have the responsibility of two of the three major functions—selecting an external auditor of the City, which takes away and gives more integrity.

Councilwoman Berz questioned if the Audit Committee would initiate? Mr. Sewell responded that the whole goal was to be independent and objective, stating that he could reference standards, which are a very big amount. Councilwoman Berz stated that we did not want to do anything wrong and needed to be really objective from all points of view. Mr. Sewell stated that under this system, we would be able to do this. He explained that his department would not report directly to the Mayor or the Council but it would be done through an Audit Committee; that they could initiate audits on their own.

Ms. Madison stated that an Audit Committee is standard and a widely used concept—that we have never had one; that we select an outside Auditor; that the Audit Committee would be a good thing for the Council to have because it gives control and oversight.

Councilwoman Berz requested under **(B)** where it says meet quarterly, that we have some qualifying words—that we say “at least” but more often if need dictates.

Councilman Page stated that he thought this was the right direction to go—that he, like Councilman Shockley, had some problem with an individual writing their own job description but that he would like for Daisy Madison to review this again and see if it “passed muster” with she and Dan Johnson.

Chairman Benson stated that any changes should be brought back next Tuesday—that the Council has to take responsibility for Stan Sewell's Department.

Councilman Pierce stated that he would like to see Donna Kelley brought in on this; that Stan Sewell wrote this and Dan Johnson hired Stan.

Councilman Page agreed that it could be Donna Kelley and Daisy Madison.

Councilman Pierce stated that this last Draft was just revised at 2:00 P.M. today.

Councilman Shockley made another point—He stated that if you tied this salary to the Mayor's salary that this employee would not have to take a "hit" like other employees when the Budget has to be cut.

Chairman Benson stated that any concerns should be turned in to Daisy Madison by Friday of this week, and she should come back with something on Tuesday.

Dan Johnson noted that Daisy Madison studying this could also be looked at as a conflict of interest because Internal Audit could be auditing Daisy's department.

Councilman Pierce still maintained that the Council was trying to circumvent their responsibility.

Chairman Benson felt that the Dual Role was the highest order.

Stan Sewell asked that he, also, be allowed to meet with Daisy Madison and Donna Kelley on this to pull something together.

Councilman Page stated that Daisy Madison would be in charge of this.

The meeting adjourned at 4:20 P.M.