

LEGAL AND LEGISLATIVE COMMITTEE
OCTOBER 26, 2010
3:40 P.M.

Councilman Murphy, Chairman, called the meeting of the Legal and Legislative Committee to order with Councilmen Rico, Scott, Berz, Ladd, Gilbert, Robinson and Benson present. City Attorneys Michael McMahan, Patrick Bobo and Crystal Freiberg were also present, as was Shirley Crownover, Assistant Clerk to the Council.

Others present included Dan Johnson, Jan Turner, Richard Beeland, Gary Hilbert, Paul Page, Chief Parker, Mark Keil, Dennis Malone, Bill Payne, Judge Paty, Judge Bean, Karen Walsh, Missy Crutchfield, Jim Templeton, Mayor Littlefield, Daisy Madison, John Van Winkle, Yuen Lee, Lee Norris, Danny Thornton and Steve Leach.

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

Chairman Murphy asked Attorney Freiberg to come to the table.

At this point, Councilwoman Berz stated that she thought the Judges had to leave. Chairman Murphy stated that he understood why the Judges were present—that there is a Charter issue as to permits in City Court. He asked Ms. Freiberg to address this.

Ms. Freiberg stated that this arose from the case heard regarding the pet company; that Judge Donald Harris, who was sitting in on the case after Judge Paty recused herself, has ruled and said there was double jeopardy; that in his opinion, City Court cannot revoke a license, and if this is the case, there are severe issues with the Code—that there would be no due process and no place for one to go if City Court cannot revoke licenses. She stated that this was a huge issue. Ms. Freiberg went on to say that the Judge does not say why City Court does not have this authority—that they may impose fines; that the Judge referenced this and State Law may be where they get their authority; that our Charter is not clear on the authority.

Councilwoman Berz pointed out that it says City Court “**may**”, which is not an exclusive word.

Ms. Freiberg responded that this is the only place they get authority from; that Statutory Jurisdiction is up to interpretation.

Councilwoman Berz still maintained that “**may**” is not exclusive. Ms. Freiberg responded that the State here is the authority for the City Judges.

Councilman Murphy pointed out that the same provision says “**may**” in certain courts. Attorney Freiberg noted that normally “**may**” means “**may**”, with Councilwoman Berz saying “then you are buying his argument”.

Councilman Benson asked if we needed a change in the Code to strengthen this? Ms. Freiberg responded that we need to address this—that it is not clear. Councilman Benson asked what her recommendations would be? At this point, Chairman Murphy interrupted to say that Ms. Freiberg was only here today to brief us.

Ms. Freiberg mentioned three options—the first was some sort of Board be given due process if it could not be the City Court Judges. Secondly, a specific Court do it if one Judge does not have the authority; and thirdly there was an MTAS opinion, which she asserted was not legal authority; that MTAS used as an example that they did not think that City Court could put vicious dogs “down”—that this was just another opinion. She stated that this is what we have “out there”; that the safe way would be some other entity review permit revocations so that there could be due process.

Chairman Murphy added that we could also ask the State to change the jurisdiction of City Court.

At this point Judge Bean spoke, first asking “Where is Andrae”? He stated that first, this Judge was not an appellate judge, and he thought he was wrong; that the City could have appealed this ruling; that “**may**” means we “**may do it**” and “**shall**” means we have to do it; that he thought City Court had the authority.

Judge Paty stated that this was not the deciding factor; that this case was subject to interpretation; that she thought we should request an Attorney General opinion; that a lot of judges don’t deal with environmental cases—that there are animal issues and other issues that they had to deal with; that there should be clarification for allowing for anything they have to do.

Chairman Murphy asked about the legal history of Municipal Reform. Judge Paty mentioned legislation effective in 2004 that does set out the jurisdiction of municipal court. Chairman Murphy asked what prompted this and Judge Paty responded that she did not recall the legal history. Ms. Freiberg stated that she thought it involved City Court Judges acting outside their authority. Judge Bean stated that he thought it was when former Judge Williams was imposing more than the \$50.00 fine, which was outside of his jurisdiction.

Councilwoman Berz stated that because we were unsure of this and it was unclear, that we need guidelines for the future; that she did not think we needed another Board, but we needed some definitive opinion concerning things City Judges do; that it is difficult to get a definitive opinion.

Ms. Freiberg responded that we can get an opinion; that in a lot of places, the Code is not clear about due process; that we took this to City Court; that McKamey made a decision, and it was not clear who should review this; that we need to be clear—that if a person disagrees with McKamey, there needs to be a place for them to go.

Ms. Walsh added that if there is no place for people to go, what happens to the animals and their disposition?

Chairman Murphy stated that first, he thought getting an Attorney General opinion was a fine request; that secondly Municipal Court is not clear—that if Judge Paty tells someone to pick up litter or you will be fined, it could involve two court visits instead of one; that what he was hearing was an illogical dichotomy—that now we were talking about getting a panel of lay people to make a decision rather than an elected judge—that this would be three random citizens who would decide these judicial processes as opposed to an attorney-judge; that he would hope that we would get support for their legislation and that city judges have this authority or some implied authority.

Judge Paty stated that there needed to be clarification.

Ms. Freiberg stated that she was just “assuming” where the Chancellor got his opinion.

Councilwoman Scott asked in summary if she was saying if we got an Attorney General’s opinion that it might help or it could do nothing?

Judge Paty stated that it would be just another opinion and not definitive.

Councilwoman Scott suggested writing what we want and what would be fair and submitting it for State review.

Ms. Freiberg explained that we have to ask a question and submit it and then ask the jurisdiction of the City Court. Councilwoman Scott asked if the law is based on that? Ms. Freiberg explained that it was just an opinion and not definitive, but it gives us a basis.

Councilman Benson stated that we needed to look at what started this problem and look to our Code. Ms. Freiberg stated that the Code created the problem. Councilman Benson stated that we needed to make an effort to clarify the Code and asked if anything in State legislation generated some of this problem? He stated there needed to be some changes to get our Code fixed. Ms. Freiberg stated that if we fix it and due process goes to City Court, and this is challenged, we would have to respond to that; that if we got a Board in place, it would end up with the Chancellor.

Judge Bean mentioned extended powers in environmental cases, which was directed to Memphis but not extended to Nashville, Knoxville, and Chattanooga. He suggested looking at this and getting legislation to lobby for this extended power in other cities.

Chairman Murphy stated that legislative history works, which made him wonder even more about our status. He asked if there was a consensus to request that the State Legislature modify our status to that of Memphis and/or a clarification of municipal format? Councilwoman Berz stated that she thought we needed the clarification first. Chairman Murphy stated that if the State Attorney General says “good”, that he is not **just** another lawyer; that we have very intelligent people looking at this, and it is not “crystal” clear, and it better become “crystal” clear. He again asked about seeking the Attorney General’s opinion.

Attorney McMahan felt that we should seek a legislative solution.

Councilwoman Scott stated that she felt like the suggestions that had been made to cover the issues were not definitive and asked if there were more changes out there.

Judge Bean responded that you can’t make anything “crystal” clear in law; that he thought we should look at the powers that Memphis has. He added that he thought we had the power now.

Judge Paty added that there were things we do not have spelled out specifically.

Councilwoman Scott asked Ms. Freiberg if we could look into this more or should follow what has been suggested.

Chairman Murphy noted that if Memphis’ powers could be extended to Chattanooga that it would resolve this. Ms. Freiberg stated that she would look into this; that right now she needed to know if she should draft changes. Chairman Murphy noted that Attorney McMahan had said we needed to seek a legislative fix. Attorney McMahan added “and modify our Ordinance”. Ms. Freiberg noted that right now our Ordinance does not say.

Upon prompting to end this meeting, Chairman Murphy stated that this was not simple stuff—that we would have to discuss Animal Code Changes next week.

Ms. Walsh stated that chickens were a “hot” topic—that the question was to have them in backyards or not at all; that she was here today to say that there is another alternative—having several specific chicken locations and people joining together with locations such as the Greenway, Crabtree Farms and the McKamey Center and buying into a co-op and raising chickens together; that they could eliminate having to add more people to take care of the chickens by having just three locations.

Councilman Rico stated that we had two other committee meetings and would have to deal with this some other time.

Chairman Murphy thanked everyone for coming.

The meeting was adjourned at 4:05 P.M.