

## **BUDGET, FINANCE AND PERSONNEL COMMITTEE**

**April 28, 2009**

**2:00 P.M.**

Councilwoman Berz, Chairman, called the meeting of the Budget, Finance and Personnel Committee to order with Councilpersons Scott, Ladd, Murphy, Gilbert, Rico, and Benson present. Councilman McGary joined the meeting later. City Attorney Michael McMahan and Shirley Crownover, Assistant Clerk to the Council, were also present. Management Analyst Randy Burns joined the meeting later.

Others present included Dan Johnson and Stan Sewell. Daisy Madison joined the meeting later.

### **COUNCIL AUDITOR MATTER**

Chairman Berz passed out a memo that was sent by her in January of 2009 regarding the Council Auditor matter. She asked that everyone take a look at this as the issue was summed up in this memo. She stated that she would quickly go over this. She explained that the issue was brought up in committee meeting as to “Why we don’t have a Council Auditor”? She stated that meetings went on forever and ever and that she was a “newbie” and looked at the issue fresh and went back to how this had come about from the beginning of the Council with Ms. O’Neal’s help. She then proceeded to go over the hand-out, noting that there should be a Council Auditor because it is in the City Charter. *“An Internal Auditor shall be appointed by the Council, independent of the Mayor, and may be removed or replaced at any time by the affirmative vote of a majority of the Council.”* Chairman Berz stated that she then went back to the minutes and mentioned that “For some reason, from inception, the job announcement for the Council Auditor position has been advertised as that of Management Analyst; that from the beginning the decision was made not to call the position “Council Auditor” but “Management Analyst”. She then read the duties: **Serving as principle resource to the City Council in examining and monitoring City programs; Overseeing annual budget requests, changes and progress; Developing and directing fiscal and managerial audit policies and operations for the City Council; and Performing other related duties as assigned.** She noted that since the present Council Management Analyst function does not consider auditing of the Chief Executive that it is not in compliance with the Court Case and City Charter.

Chairman Berz then went over the information concerning the Mayor's Internal Auditor. **The City Charter gives the Mayor the ability to create the offices he deems necessary to the proper oversight of city government's financial behavior. Additionally the Charter specifically provides:** *"The Mayor may, as often as he deems necessary, appoint not more than three (3) competent persons to examine without notice the affairs and accounts of that city officer or board, and the money, securities and property belonging to the City and in the possession or charge of such officer or board."*

She then went over the information that she had researched regarding the role of the City Finance Officer. *"The City Finance Officer shall supervise and have charge of the keeping of all accounts and financial records for every department and agency of the City, the preparation of all financial reports and statements, the audit of all claims and budgetary and auditing control over the City's revenues and expenditures"*.

Chairman Berz stated that this is a statement of where we are and asked if there were any questions. She went on to say that this is where we are now and are seeking a long-term goal and a short-term goal, noting that long-term goals may require Charter changes.

Attorney McMahan stated that it would be a year from August for any Charter changes.

Chairman Berz stated that whatever the Council decides can't be done for approximately two years; however we could meet the Charter in short-term goals—that there were alternative ways to do this; that we were not trying to take over the Mayor's Office but might need a parallel and equal officer. She went on to say that one alternative was to take the Management Analyst and get this person prepared to be the Council Auditor; that we had discussed outsourcing and the functions that would be involved; that we had taken a look at what other cities do, including Knoxville and Austin, Texas.

She reiterated that the issue was that the Council Auditor should be independent of Administration and have the ability to audit the Executive Office, which would be in line with the Charter. She continued, telling those who were new on the Council that before they were elected, the present Council had made some decisions as to what we will do in order to be in compliance, being aware that this could be a very political issue; that the Council had decided that by the 21<sup>st</sup> of April, each Councilmember would submit names of qualified people who were experts in the field of finance and government; that the Council would then choose five members to comprise an Audit Committee who would be independent of the Council and who would come up with the best approach as to meeting the intent of the Charter. She went on to say that she had submitted a name and then the election came about, and she thought it was wrong for the new Council to be tied to the decision of the previous Council and should have the opportunity, also, to submit names.

Chairman Berz went on to say that she had met with people in Administration concerning this issue; that she had met with the City Attorney, Stan Sewell and Randy Burns and everyone was “fabulous”; that she had also met with Daisy Madison and Donna Kelley for personnel requirements. She stated that this had been a work of trying to get everyone together so that we would not be at “odds”.

Councilman Rico stated that it was his understanding that we would use Randy Burns and just get him more training.

Councilman Benson stated that Chairman Berz had summarized this issue well; however we had all gone through this period thinking that we had to get an Independent Auditor to answer to the Council because the Law says we are not complying; that if you look into the background of this and see the Council’s first contract with this position, it speaks to what we are questioning now—that the person was hired to be a Management Analyst, which would serve as the Council Auditor. He went on to say that it is the Council’s fault that we have not used the Management Analyst in an Auditor capacity. He went on to say that CPA’s had been calling him wanting to be on this Audit Committee—that this is what we are getting into, and it is his feeling now that he does not want to nominate anybody. He reiterated that the Council has not been calling on Randy Burns to do his job; that if the Council should request something of Randy, and he thought it was too big a task that we might have to do something like we did when we hired Attorney Roger Dickson to handle the “Marti” issue; our City Attorneys felt that they could not touch this.

Attorney McMahan agreed that it would have been a clear-cut conflict of interest.

Councilman Benson went on to say that he was afraid to nominate anybody to be on an Audit Advisory Board; that Randy Burns can be our auditor, and if we have to hire a specialist, then we can; that we could hire another “Stan Sewell” who he jokingly said makes “billions of dollars”, which would cost the Council a lot of money. He again told Chairman Berz that she had done a good job, but he would hate to see us use a lot of money, when we can already follow the letter of the law.

Dan Johnson stated that he had stayed out of this discussion; that he and the City Attorney both agreed that the Council was complying with the Charter; that Administration had an auditor that reports to the Mayor but that Randy Burns is in compliance with the Charter but is currently not doing audits as such; that he would recommend that we come up with an Audit Committee to assist with Internal Audit and to hire an External Auditor.

Attorney McMahan stated that there would have to be a Charter change for joint responsibility.

Chairman Berz summarized that she thought everyone agreed that an Audit Committee was good and that Randy Burns could take the Auditor job, but he would need a little more training.

Councilman Gilbert stated that he did not know how Randy Burns feels about this—that as he understood it Randy would do this internally, and if he needed some help, we would hire an outside source when needed, but we would still have Randy; that if it was something that was not in his field, we could actually get an outside auditor to help him.

Chairman Berz asked if we were saying change his title to Council Auditor and get him some additional training and if there is a difficult job, we could outsource.

Councilman Murphy questioned if Randy Burns meets the criteria for the job?

Chairman Berz responded that there might be one or two courses that he would need to take, very briefly.

Councilman Murphy wanted to know if we were talking about six weeks training?

Chairman Berz indicated that Donna Kelley had said he would need some more training; that it would be a job classification change.

Councilman Murphy stated that he would not be comfortable with six months' training.

Councilman Rico again pointed out that the Council had been in compliance with the Charter—that we had just not asked Randy to perform any auditing functions.

Councilman Murphy stated he could not perform these functions if he were not qualified.

Both Councilmen Rico and Benson pointed out that he **was** qualified—that he was a member of MENSA.

Daisy Madison added that being an Auditor does not mean that the person has to be a CPA; that the person just needs to be an accountant and maybe join an organization.

Councilman Gilbert stated that Mr. Burns had told him that he used to be an Auditor.

Councilman Murphy stated that he would like to know the timeframe for training and if Mr. Burns was willing to do this; that it would be an Office of Performance Review, which is an important function—that he would have to commit to two giant jobs—Management Analyst and also be an Auditor. He noted that Stan Sewell has a staff to help him; that we don't need to set up an Auditor position that cannot perform the function; that the Council needs to know how Mr. Burns feels about this, noting that outsourcing is **not** cheap. He went on to say that we needed to review the Charter in the whole—that the Mayor provides a Budget, which the Council is free to amend and could even write their own budget. He stated that he thought we had to have an Auditor—that the City could elect a scoundrel, which does not speak to our present Mayor; that we could not decide this on the basis that there has not been a problem. He stated that doing this correctly was important and that Randy Burns already has a job, and this would be a second job.

Ms. Madison pointed out that we do have an External Auditor, who should be independent of all of us and perform in a very ethical manner.

Councilman Murphy thanked Ms. Madison for this information, but still felt that we needed to look at the Charter as a whole, since the Council is the approving body, and the Executive division has to be in compliance with the Council's wishes.

Chairman Berz asked Councilman Murphy if he had a “picture” of how this should look?

Councilman Murphy stated that we first had to see if Randy Burns was willing to take this responsibility and what the timetable would be for training if he wanted this job, which would be a promotion. He went on to say that he thought Mr. Burns would require a Staff.

Chairman Berz stated that what she thought she was hearing was that there is a caveat “if Randy Burns would be interested in a promotion”; then what would his training be and what staff would he need in order to do both jobs.

Councilwoman Ladd stated that she agreed with Councilman Murphy; that we might need to bring Randy up to speed and reclassify the job he does. She went on to question if he was hired to do this, why would we need a change in job description? She questioned if auditing was what he was hired to do.

Chairman Berz explained that a “Review of the Executive Division” was left out. She went on to say that the “hearsay” was that it was felt that the Mayor did not want someone looking over his shoulder, and it all became too political.

Councilwoman Ladd stated that she thought the best way short-term was to ask Randy Burns if he was interested in obtaining extra credit. She stated that she liked the idea of having an Audit Committee in place right now, which would give Randy some resources; that in the short-term, she thought we should “shore” this up with a committee, which would allow for citizen input and make everything more transparent; that we have talent in the community who could ask the hard questions; that Internal Auditing is a department with testing functions and to do it correctly, she thought we would need a department; that if a conflict of interest comes up with the Mayor, we would have our own independent auditor. She again stated that she liked the Audit Committee idea.

Chairman Berz stated that an Audit Plan would take out the politics; that we had agreed to five members on the Audit Committee—that the reason we chose five was so that it would not be district representation—that there had been a long discussion about this.

Councilman Benson stated that he was glad that it was not district representation—that he had two CPA’s in his district fighting to be on the committee. He wanted to address what Councilwoman Ladd had said; that as matter of background, the Council was responsible for Randy Burns not functioning as an Auditor; that what brought all of this up was politics—that Stan Sewell had audited an agency, and it made one person very, very mad, and he wrote the State about this; that this “mad” person talked to one Councilman, whom he stated he loved and that Councilman McGary had beaten; that this man was a friend of this one person and had brought this issue to the forefront, and it had blown his mind; that he had done his research and found that we already had someone assigned to do our audit; that Randy Burns had done audits before and was a very bright person (member of MENSA) and was probably the smartest person in these two buildings; that a committee is fine, but he would not appoint anyone.

Chairman Berz asked if everyone was in agreement, irregardless of how this all came about, that we would have an Audit Committee with five members? Councilman Murphy asked where these five members would come from?

Chairman Berz responded from “us”; that all councilmembers would submit names and then we would select five of these; that she had already submitted David DiStefano, who would make a good member.

Councilman Murphy asked if the Charter required this and was told “no”. He wanted to know what we would achieve by doing this and what we would charge the Committee to do? Chairman Berz indicated that they would come up with an Audit Plan and also names. Councilman Murphy wanted to know “names of who”? Chairman Berz responded names for outsourcing. Councilman Murphy confirmed that this would be a Professional Advisory Panel. Chairman Berz again stated that they would decide if we needed outsourcing. He wanted to know if they would just make suggestions. Chairman Berz stated that they would come up with an Audit Plan.

Mr. Johnson added that an Audit Plan is developed by Analysis of Risk; that the Audit Committee would work with the Internal Auditor.

Councilman Murphy asked him if he was talking about the Mayor's Internal Auditor or the Council's Internal Auditor? Mr. Johnson responded "both" and also assist in the selection of an External Auditor.

Chairman Berz stated that this was checks and balances; that right now the Council has no auditing function over the Executive Branch.

Councilman Murphy stated that he got this—that it would be a consulting body.

Councilman McGary, who has just joined the meeting, wanted to know how the Audit Committee members would be replaced and what their terms would be?

Chairman Berz stated that as she understood the wishes of the Council, we would find out the information we needed from Randy and would submit names for the Audit Committee.

Councilwoman Scott noted that the Audit Committee might be comprised of five CPA's.

Chairman Berz stated that she would suggest that they not all be CPA's—that they could be bankers or lawyers or business men—that the sky was the limit; that in the pool of names we needed a good balance of talent and expertise.

Councilwoman Scott wanted to know what the anticipated mission of the Committee would be?

Chairman Berz responded that the last memo that was sent out explained what the Council was doing in regards to this committee—that they would be asked to develop an Audit Plan and be involved with the external people that we hire; they could also be responsible for re-writing the present job description of our auditor. She added that the present job description was not bad but leaves out "audit of the Executive Branch".

Councilwoman Scott wanted to know if the Council would be making any suggestions. Chairman Berz stated that the Council would look at what the committee comes up with and then they would be approached by the Council; that the final responsibility lies with the Council. Councilwoman Scott wanted to know if this would be a volunteer committee and was told "yes".

Stan Sewell addressed the Council, stating that he was not a member of MENSA nor was he a genius but wanted to speak to Internal Audit with regards to how it is now. He stated that when he read the Charter, the Charter could be subjective; that as he read the Charter there was a clear job description and Mr. Burns was hired as an Internal Auditor. He stated that he was not sure of Randy's qualifications—that he thought he had an MBA and was an accountant and maybe a member of MENSA. He went on to say that he (Mr. Sewell) did maintain a very comprehensive staff that covered a lot—that the real issue was a small area gap—the Council Auditor. He mentioned the Audit Committee as a long-term goal, adding that in the short-term, the Council was not out of compliance with Randy, and he could audit anything; that he has access to what he needs. He went on to say that it did not make sense to him to maintain two totally separate departments—that this might be a long-term goal; that he felt comfortable saying that the Council was meeting the intent of the Charter with what Randy is doing and maybe adding a few other things. He went on to say that the Audit Committee was good but that the Council needed to be careful what they charged them with and that he hoped it would be a liaison that his office could work with. He stated that he represented the Mayor and that the Audit Committee could be an Advisory Board to both the Mayor and the Council and be a liaison for him; that the Committee might could get a better grasp on the Auditor that the Council now has or if the Council needed to outsource. He ended by saying that the Council had hired someone, but the Council did not have him doing auditing functions.

Chairman Berz recognized that time was getting short and that we would not be able to get to the Mission Statement today and asked if the Council wanted to meet again in a week? At this point she recognized that Randy Burns had joined the meeting and stated that there were some questions to ask him. She asked him how he felt about being the Council Auditor and it being a promotion and him needing more studies and how long he thought this would take? She also asked him what additional staff he would need to do the job?

Mr. Burns responded that he had been the Council Auditor and that was what his position said; that he had talked to both of his predecessors—one who was a CPA and one who had a Masters in Accounting; that both of his predecessors told him that “pure” auditing would not happen in this position—that they had never been asked to do an audit. He mentioned that in his research and study that the position has really changed a lot—that he did not have a problem with doing occasional audits that the Council might need; that he had worked as an Internal Auditor with UTC; that being a Management Analyst or Internal Auditor depended on the tasks and regime.

Chairman Berz asked if he had talked with Donna Kelley; that Ms. Kelley felt there would be a change in job description and might entail additional study.

Mr. Burns responded that the position did not require a CPA; that he got in with a Master's Degree and experience.

Attorney McMahan explained that Donna Kelley considers job descriptions “at large” in the City; that this is unique, and the Council can write their own job description.

Chairman Berz stated that this could be one of the tasks of the Audit Committee—to fine-tune and write the job description.

Councilman Murphy added that there needed to be a general acceptance of qualifications for this position first.

Mr. Sewell stated that this position did not have to be a CPA—that this is subjective—that a Master’s Degree in Accounting and experience leveled this out. He went on to say that “Yellow Book” standards are not mandatory. He explained that “Yellow Book” is for auditing functions, but we are talking about competence, and this position does not specify a CPA. He went on to say that his department did use the “Yellow Book” but this could be an issue because under the “Yellow Book” continuing education was required—that continuing education was one thing that was required. He added that there is nothing that says an Auditor has to follow the “Yellow Book”, but they do it in his department.

Chairman Berz added that the “Yellow Book” was Best Practices.

Mr. Sewell stated that his Audit Staff consisted of one CPA and one Auditor who was not a CPA—that experience and education can get you through; that it was his consensus that basic accounting would comply with the City Charter.

Councilman Benson stated that the only time we would use this position as an auditor would be maybe if we wanted to audit the Mayor’s Office; that anytime you audit anybody, you will get a complaint; that our Auditor could step in and see if there is justification for the City’s Internal Auditor to audit a particular division. He went on to say that he thought we had what we needed right here; that if the Council wanted an Audit Committee to advise us, then fine, but he did not think he would recommend anyone; that the Council just needs to do their job.

Mr. Sewell stated that an Audit Committee could help the Council deal with what they are dealing with right now.

Chairman Berz stated “please at this point” would a week be time enough for the new members to research this; that she thought she had heard agreement on an Audit Committee; that everyone needs to submit their names to Carol O’Neal; that the Council had already voted on the Committee and the final decision was supposed to have been made today. She asked the Council what their pleasure was? She stated that we needed to move on and suggested that they think about this for another week.

Councilman Murphy stated that he thought the Audit Committee was a wonderful idea—that if we could get smart, professional people, that he for one could have a name within a week.

Chairman Berz asked if there was anyone who could not get us names in a week?

Councilman Benson stated that he wanted to designate Randy Burns as our Auditor right now and then let the Audit Committee tell us what we needed to do.

Chairman Berz asked that we just deal with one thing at a time—that within a week we would get the names in for the Audit Committee.

Councilman McGary confirmed that she would like to have a name within a week. Chairman Berz stated that was when we would have the names in. Councilman McGary stated that the Council needed to make a decision and move on. At this point Chairman Berz stated that Councilman McGary was at a disadvantage because he had just joined the meeting. She questioned how we could educate Councilman McGary on this issue.

Attorney McMahan suggested that the Audit Committee needed to be done by Ordinance, with staggered terms of one, two and three years; that he could draft something and have it ready two weeks from now.

Chairman Berz stated that she thought everyone had agreed to have an Audit Committee and to postpone this until the new members could have input. She asked if we wanted to go forward with the Committee? She asked that all say “yes”. She added that names needed to be suggested and expediency is the matter now.

Councilwoman Scott asked if there had been some discussion about not having Council members on the Committee and asked if there could be any way Council members could rotate as Audit Committee members; that we might have individuals who don’t live in this environment and would not have the Council’s perspective. She asked if there could not be a sprinkling of two Councilmembers that could rotate on this Committee?

Attorney McMahan explained to her that this would create a sunshine problem to have two. In that case, Councilwoman Scott stated one member would be fine.

Mr. Johnson noted that independence was needed on this Committee; that having one Councilmember out of five might not be a problem. However, he explained most Committees like this are set up for a degree of management.

Mr. Sewell added that you see a lot of such committees set up in different ways; that to form an Audit Committee, it needs to be deliberate and structured right, and the Council should not just jump into this; that politics needs to be drown out, and the Committee needs to be totally independent. He mentioned a Tennessee Society of CPA's appointment, again stating that this would take a lot of structure.

Chairman Berz noted that in the packets the Council had been given there is the Austin model and the Knoxville model; that we could get a packet for the new members.

Councilman Benson stated that this had been going on for months and months; that he would like to see this Council exercise their responsibility; that Randy Burns was hired as a Management Analyst and also Auditor, and he can be recognized as both.

Mr. Burns agreed that this is already in place.

Ms. Madison urged that the Council look at this "stuff". She stated that she would like to see the Council slow down and look at this Audit Committee; that she knew Best Practices was an Audit Committee, but this is a major job, and the Council would need to give the Committee guidance; that someone needed to be assigned to look into the responsibility of an Audit Committee.

Chairman Berz stated that there was still more information out there and that she would gather the information on the function of an Audit Committee.

Mr. Sewell stated that he would like to say something else; however Councilman Benson explained to him that there was a 3:00 meeting already scheduled, and it was now past 3:00.

Chairman Berz stated that she would get the new Councilmembers packets to review. She noted that we have to advertise every meeting and wanted to know a date when the Council thought they would be ready to make a decision. She added that Stan Sewell would make himself available for questions.

Councilman Rico asked what about the decision on Randy? He stated that Randy is our Auditor right now.

Councilman Benson asked if anyone would say that Randy is not our Auditor right now?

Chairman Berz responded he needs requisites.

Councilwoman Ladd suggested meeting on May 5<sup>th</sup> at 1:30 p.m., which will be next week. Councilman Benson stated that there is a 11:30 McKamey meeting next week that may run until 1:30 p.m. Councilman Rico mentioned the "Women of Distinction" that is scheduled for next week.

Chairman Berz stated that we would be back here by 2:00 p.m. and stated that we would re-convene next week at that time; that she would get the packets to the new members and that Stan Sewell would make himself available for questions. She asked Randy Burns if he, too, would make himself available.

Before the meeting adjourned at 3:10 p.m. Chairman Berz stated that the Mission Statement discussion would have to be put off for two weeks; that it would be held at 2:00 p.m. two weeks from now.