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LEGAL AND LEGISLATIVE COMMITTEE

August 4, 1998
4:00 P.M.

The meeting of the Legal and Legislative Committee was called to order by Councilman Pierce, Chairman, with Councilmen Eaves, Taylor, Rutherford, Lively, Hurley, and Swafford being present. Councilmen Crockett and Hakeem joined the meeting later. City Attorneys Randall Nelson and Mike McMahan; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Barry Bennett, Adm. Boney, Adm. Marcellis, Mayor Kinsey, and Ken Hays. Judge Williams joined the meeting later.

CHARTER AMENDMENTS FOR NOVEMBER BALLOT

Chairman Pierce called the meeting to order and stated the purpose of the meeting was to look at Charter Changes for November. He inquired of Attorney Nelson the timeframe under which we are working.

Attorney Nelson explained that the ordinances would have to pass first reading by next Tuesday (August 11th) and second and third reading the following Tuesday (August 18th); then they would have to be advertised by the first of September and 60 days later be voted on in the November election.

Chairman Pierce noted that the amendments and proposals had been presented by Mayor Kinsey, and he was glad he was here to defend them.

Mayor Kinsey noted that some of the amendments and proposals were instigated by the Council.

Chairman Pierce stated this was the first chance the Council had had to look over them, and they did not know what they were dealing with; that he had thought that the Council would get them earlier; that the first he was made aware of them was when he read them in Sunday's

newspaper.

Mayor Kinsey offered to just go over them briefly today and have another meeting such as this before next week's Council meeting.

Chairman Pierce asked that Attorney Reingold be given an opportunity to speak briefly before the discussion on Charter amendments began.

Attorney Reingold stated that he would like to have the word "salary" further defined; that this was basically a "housekeeping" change and something that was not picked up years ago; that he would like it further defined as "Basic Salary". Chairman Pierce asked if he had run this by the City Attorney; that we needed to get Attorney Nelson to concur with what Attorney Reingold was saying. Attorney Nelson responded that this was pretty simple and basic in what it does--that he felt "Basic Salary" was the appropriate definition, but it could be open to discussion. On motion of Councilwoman Hurley, seconded by Councilman Lively, this comes with a recommendation to the full Council.

At this point Mayor Kinsey stated that he would let Attorney Nelson go over the Charter Amendments.

Attorney Nelson began with the Pension Vesting Amendment, explaining that presently under the General Pension Plan it takes ten years to be vested; that under Federal law and industry, employees can be vested within five years; that it was recommended that we change our vesting period from ten years to five years and that this had already been handled in the last two Budget Ordinances and would represent no fiscal impact on the City to speak of.

Chairman Pierce asked if anyone had looked at other different City governments and the Private Sector as to when their employees are vested; that he felt allowing city employees, even elected ones, to be vested in five years was burdensome on the taxpayers; that this would allow a person to draw at least ten pensions.

Attorney Nelson responded that they would not be getting much from each source as this would be based on their time of service, and it would not amount to a "hill of beans"; that people could not draw until they were 62 years old anyway. Chairman Pierce questioned if other benefits would be involved. Attorney Nelson responded that this just related to pensions

Councilman Crockett asked about the actuarial impact. Adm. Boney responded that we had taken this into consideration actuarially for the last two years, and there would be no change in the contribution rate from us (City).

The second amendment concerned a change in the City Judge's Term; that the way it is scheduled now, the next City Judge election will be in

March or April of next year and will be the only one on the ballot, and the City will have to incur the full cost of an election; that it used to be scheduled at the same time as the School Board election and since we no longer had the schools, this one was left by itself; that we wanted to be sure this was the last time this happens; that the next Judge's terms would be shortened until September 1, 2006, when all of the judicial positions would be changing hands; that after this election, the term would revert to an eight-year term and would be voted on at the same time as all other judges.

Councilman Crockett asked how much time the term would be shortened by, and Attorney Nelson stated it would be shortened by five or six months and after that it would be an 8-year term and be held with all other judicial elections.

Chairman Pierce noted we were talking about shortening the term and asked if we could extend the term; having the election in March and the run-off in August; that we now do our run-off in City elections in 30 days; that if we could shorten the term by three to four months, he questioned why we could not extend the term eight or ten months. Attorney Nelson responded that it would have to be much longer than that--that the next City election is 2001 and then 2005 and then 2009; that we needed to get as close to eight years as we can. Chairman Pierce verified that it would not affect this term at all and questioned why the next judge's term could not go for 8 1/2 years and then be back on the regular City election.

Councilman Lively questioned if we could extend the present term to 2001 and then elect the City Judge along with other City officials and then be back on every eight years.

Attorney Nelson responded that he would not say this could not be done, but we could not eliminate the next election for judge.

Chairman Pierce questioned extending this term over to March.

Judge Williams stated that he understood what we were talking about but was not sure we could extend the term, and it would take it out of the judicial elections across the State and there was something to be said for running like-kinds together; that people are totally confused now, and he thought it should be on the cycle with all other judges. He stated that he did not think you could extend terms.

Chairman Pierce asked if there was any precedent for the decision to reduce the term.

Judge Williams responded "Oh yes"--if the person affected had no objection; that shortening the term would be minuscule when considering retirement; that it needed to be put on cycle with other elections and then the cost of the election would be minuscule--maybe less than \$2,000; that he knew you could do it this way but whether you could extend the term would have to be researched.

Councilwoman Rutherford asked if Judge Williams was the only qualified candidate in the next election, would we still have to hold an election. The answer was yes.

The next amendment considered was the repeal of provisions relating to the Humane Society. Attorney Nelson explained that the Humane Society had been acting as the City's agent and that had been a major source of concern to Administration and also a concern shared by the City Council, and we felt it could be better operated by the City, and we had the power to do this. He mentioned that the fees set by the Charter had not changed since 1925, and are not sufficient and you get the service you pay for.

The number four proposal was a second revision to the Pension Plan. Attorney Nelson explained that in the past part-time employees were eligible to become members of the General Pension Plan, and it seems to be unfair for them to get the same benefits as Full-Time employees; that the Personnel Director had requested that a change to be made to state that employees have to work a standard work week exceeding 25 hours in order to obtain this benefit.

Councilman Hakeem asked if there were currently employees who are working 25 hours or less and receiving this benefit. The answer was "yes". Attorney Nelson stated that part-time employees were eligible to be members of the Pension Plan under the Charter.

The fifth proposal had to do with changes in the Organization of the Fire and Police Departments and minimum pay of fire officers. Attorney Nelson explained that the current Charter requires a two-platoon system for working in the Fire Dept., which requires each fireman to be on duty 24 hours and then off 24 hours; that in 1987 a Federal Fair Labor Standards Act was passed which takes precedence and calls for a three-platoon system, which is in violation of our City Charter. He went on to explain other revisions as they related to minimum salaries for Dept. Chiefs on down to Lieutenants which are antiquated and outmoded, and it makes no sense for this to be in the Charter, and this will come out. Attorney Nelson mentioned another section that needed to be cleaned up that came as a result of the change of government in 1990, and we needed to strike what is inconsistent in the Charter. He stated that in the next election we might need one master change for everything.

Councilman Eaves noted a concern with the last sentence in the paragraph relating to "special policemen, political activities and gratuities". He asked Attorney Nelson to give the Council a print-

out on these changes. Attorney Nelson explained that it was provided in the Charter that Police officers and Firemen can't receive rewards without approval by the City Commission, and we were striking "City Commission" and putting in "City Council". Councilman Eaves questioned Police officers working in city campaigns. Attorney Nelson stated they could do this off-duty but not in uniform--that this was not being repealed.

At this point Councilman Hakeem questioned a previous point that was made dealing with city employees with 25 hours or less. He asked who made this request to require employees to work a week exceeding 25 hours. He also asked the number of people in this category (working 25 hours or less) that we knew about who were members of the General Pension Plan; that it seemed some people were getting benefits and some were not. Mr. Burns noted that there are two different categories--Temporary Part-time and Permanent Part-time.

Councilman Hakeem stated he understood this, but he wanted to know who classified who.

Mayor Kinsey stated we should be able to get this information.

Councilman Eaves stated if we offered full benefits to part-time people it would be defeating the purpose of part-time people; that benefits were a big part of employment.

Councilman Hakeem stated he did not disagree with what Councilman Eaves was saying but to him there appeared to be a problem--that people working less than 25 hours have benefits and some do not, and he wanted to know what the criteria was.

Mayor Kinsey indicated that they could get the information as to how many people we are talking about and what the categories are.

Amendment No. 6 dealt with Redefining Duties of the Finance Officer. Attorney Nelson explained that under the old form of government, we had a City Auditor and this had not been changed for the new form of government, and he sat down with Jim Boney and Daisy Madison and discussed changing this old portion of the Charter. He used as an example the fact that under the old form of government the City Auditor was also the Clerk and maintained all of the official records of the City; that responsibility is now that of the Clerk of the Council who maintains the records through the legislative branch rather than administration, and he stated that sort of thing needed to be cleaned up.

Change #7 was entitled City Officers. Attorney Nelson explained that this was a clean-up matter with one exception. He noted that it provided for minimum pay of the City Auditor and City Treasurer which are antiquated. He also mentioned that the City Charter has

provisions for a City Physician, stating he did not know when we had had a City Physician, and this needed to be struck; that the City Assessor position needed to be taken out. He explained that the City Engineer position was to come out as an appointed position and become a regular tenured employee as the City Engineer works under a Department Head. He noted that we are in the process of trying to find a new City Engineer and with this change this person would be assured that their job would not terminate with a change of mayors. Mayor Kinsey added this would be helpful.

Amendment No. 8 had to do with the temporary disability or inability of the Mayor. Attorney Nelson explained that if the Mayor has to be away for an extended period of time that there needs to be some provisions made--that there needs to be some provisions if he can't function for a number of months; that provided if he is able, the Mayor needs to certify to the Finance Officer and the Clerk of the Council his reasons; that in the meantime, the Chairman of the Council would act as Mayor; that it would be provided in the Ordinance that the Chairman, in this position, would not have a vote on matters of the City Council while he is serving as acting Mayor; that there are provisions that the majority of the Administrators and the City Council could certify the temporary disability of the Mayor and by certification of the Clerk of the Council and Finance Officer, they would be able to re-assign the duties of the the office. Attorney Nelson explained that he patterned this after the Federal government and Congress and the Cabinet.

Councilman Hakeem questioned how this would "play out" with Administration and Legislation certifying. Attorney Nelson explained that the way this was designed it should prevent the City Council from attempting to usurp the powers of the Mayor if they so desired; that the majority of the Legislative Board and the Administrative Board would have to agree that the Mayor was incapacitated. Councilman Hakeem noted that he was thinking of an incident where a Council might declare a Mayor permanently disabled when he really was not disabled, and it might end up in Court. Attorney Nelson explained this did not involve the mental state of the Mayor; that this was speaking of a disability as when something traumatic happens. Councilman Hakeem asked if Administration and the Council disagree if we went to Court. Attorney Nelson explained that in this case the Mayor would remain in office. It was noted that the pay of the Acting Mayor, if any, would be determined by the Council, and the pay of the in-active Mayor would remain the same.

Attorney Nelson next went over an Ordinance that Chief Dotson had recommended repealing all references to Detective in the City Charter. He explained that once an employee is promoted into "plain clothes" that the Department's hands are somewhat "tied"; that the Chief wanted the word Detective removed and these positions included with all Police Officers and not make it a separate category.

Attorney Nelson noted that there was one more amendment that

Councilwoman Hurley had asked for. Councilwoman Hurley stated that she had asked Attorney Nelson to draft this one.

Attorney Nelson referred to Section 3.1 of the City Charter which states that "No person, while holding 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." He stated that Councilwoman Hurley wished to delete "federal and state" and leave the "county" in.

Councilwoman Hurley explained that what she meant was that one in the employment of the federal or state government could serve as an elected official in the City. Attorney Nelson stated that right now, they can't.

Mayor Kinsey questioned if this would mean that a State-elected official could also be a City-elected official.

Councilwoman Hurley explained that her intention was not that a person could serve in two elected positions; that a person would have to run, get elected, and then serve unless the opposition brings a challenge; that she was not endorsing serving in two elected positions.

Councilman Swafford stated that he would support this if it would also include the County; that this matter had arisen when he was elected, and he had fought this; that he had been on the Council five years, and he could not think of one vote that would have been any different if he had remained a County employee; that he would support this only if Federal, State, and County were all deleted.

Council Crockett indicated that he, too, would include all three, including the right to run for multiple offices; that it would not bother him for a member of the City Council also being in Nashville in the Legislature.

Councilwoman Hurley added that excluding employees of any branch of government, disenfranchises a lot of people.

Councilman Swafford indicated he had no problem with the elected position either.

Councilman Crockett stated he was comfortable with the language, with the addition of the word "County".

Councilwoman Rutherford indicated that she agreed with Councilwoman Hurley.

Councilwoman Hurley indicated she would be comfortable with including the County if we would say a person could not serve in two elected offices.

Councilman Eaves stated that most things that can happen usually will;

that he had a problem with this amendment, and he would explain why--that he would have a problem with a County Finance Dept. person serving in the capacity down here of City Councilman; that he was in favor of leaving the Charter as it is.

Councilman Crockett moved to make the changes, including the deletion of federal, state and county governments. This was seconded by Councilman Swafford.

Councilwoman Rutherford questioned if this motion would allow a person to hold two elected positions. Attorney Nelson stated as the motion now stood, we could just strike the whole sentence.

Councilman Taylor asked if you could not just add county along with the federal and state governments. Attorney Nelson explained that if you do that, there is no sense in having in stipulations along this line.

Councilwoman Hurley moved to add the county along with the federal and state governments but to exclude holding two elected official positions. This was seconded by Councilwoman Rutherford.

Councilman Hakeem stated that he felt we needed to table this. Attorney Nelson stated it could be tabled one week, and we could have another meeting next Tuesday at the close of the Public Works committee meeting. (Councilwoman Rutherford stated that she already had something scheduled for this timeframe).

Chairman Pierce stated we would just have to try and "squeeze" this in. It was unanimously voted to table this.

Councilwoman Hurley indicated that what was drafted was not what she had intended; that the proposal had gotten amended and tabled before what she had intended even got to this body; that this was not the draft she had asked for.

C-1 HIGHWAY COMMERCIAL ZONE

Attorney Nelson noted that there was a matter than Councilman Lively wanted discussed concerning pre-manufactured homes and C-1 Highway Commercial Zoning and the requirements for screening and limited number of demonstrator houses on the property and whether it should be only a showroom type of thing.

Councilwoman Rutherford asked if this had gone before the Planning Staff. If not, Councilman Lively questioned why we were meeting on this.

Chairman Pierce stated this could be talked about more at tonight's meeting.

Councilwoman Rutherford stated she thought it should be referred to Planning. Councilman Lively stated this would not mean we were approving this, just referring it to Planning. On motion of Councilwoman Rutherford, seconded by Councilman Lively, this will be sent to Planning. This was opposed by Chairman Pierce.

Councilman Crockett indicated that he also had a proposal. Chairman Pierce noted that he had asked that proposals be submitted prior to this meeting. Councilman Crockett stated his proposal concerned a Personnel Board that had been discussed a couple of times before concerning grievance hearings. Chairman Pierce stated this could be passed along until next week along with Councilwoman Hurley's proposal. On motion of Councilman Swafford, seconded by Councilwoman Hurley, this will be discussed next week.

The meeting adjourned at 5:15 P.M.