



CITY OF DOVER

CITY COUNCIL - MINUTES

Meeting Type: Special Meeting
Meeting Location: Council Chambers, City Hall
Meeting Date: **Wednesday, August 19, 2009**
Meeting Time: **6:30 pm**

Present: Mayor Myers, Deputy Mayor Trefethen, Councilors Callaghan, Carrier, Cheney, DeDe, McCusker Scott and Weston.

Also Present: City Manager Joyal, City Attorney Krans and City Clerk Lavertu.

Councilor Scott led the Pledge of Allegiance.

1. CITIZEN'S FORUM

Citizens are invited to speak on the subject matter of the Special Meeting. Statements shall be limited to five minutes.

Mary Hebbard, 97 Spruce Lane: She said it was an interesting position to be in, because she didn't know what the legal opinion said, but she felt it should be released. She said Councilor Callaghan introduced a resolution for a Charter Amendment to the ballot for the November Municipal Election. He said that resolution had to be approved as to form by legal counsel. She said Councilor Callaghan worked with City Attorney Krans to craft the wording and to have that document approved before being placed on the agenda. She felt City Attorney Krans should have recused himself, because it has to do with his position, and the outcome of the Charter amendment could have affected his employment with the City. She said during the workshop on July 29th the resolution was discussed, and it was stressed that time was of the essence. She said at the August 12th Regular Session of the Council the resolution was brought up to be put to public hearing. She said the Deputy Mayor asked that the resolution be killed because of the legal opinion that was received. She referred to the City Manager's comments after the July 29th workshop, saying that City Attorney Krans came to him because he felt there was a conflict of interest. She said the City Manager went and got an outside legal opinion from Attorney Bolt, of Donahue, Tucker & Ciandella, who had been claimed to have done previous Charter work for the City. She said the Councilors received that legal opinion, which was 27 pages long, moments before the August 12th Council meeting. She said Deputy Mayor Trefethen and Councilor Carrier seemed more versed as to what the legal opinion said. She said it was the City Manager's responsibility to get the information to the Councilors prior to the meeting, so they have time to review it. She felt there could have been an Executive Session prior to that meeting so questions could have been answered. She said folks expected that resolution to go to a public hearing so they could discuss it, and then it was dead in the water because of this legal opinion that the Councilors didn't seem to know anything about. She referred to the comments at the August 12th meeting about a severance package of thousands of dollars if the Charter amendment went through and he no longer kept that position, or he sued for breach of contract. She said that wasn't sufficient reason to keep the opinion from the members of the public and to keep the Charter amendment from going forward to a public hearing. She said the Council subverted the democratic process. She said the people have the right to have the facts presented to them so that they can make the best decision possible. She said the people have the right to say whether or not they believe that the City Attorney should report to the City Council or the City Manager. She said the opinion should be released so the people do not have the Council's thoughts based on their filters and prejudices. The process should be allowed to go forward and people should be allowed to vote on it.



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Mayor Myers, seeing no one else wishing to speak, closed the Citizen's Forum.

2. RELEASE OF LEGAL OPINION DATED AUGUST 12, 2009.

Councilor Callaghan moved for the release of the legal opinion; seconded by Councilor Cheney. Councilor Callaghan said the legal opinion was based on a request that focuses on the form of a resolution, and no responses like this from the City Attorney have been kept confidential. Councilor Cheney said opinions used by the Council should be released.

Councilor Scott said Attorney Bolt is not his attorney or the Council's attorney. He said he felt a confidential memo was inappropriate. He said there was no client/attorney privilege.

Deputy Mayor Trefethen said he would be voting to release this opinion just so that it is clear. He said the City Manager sent an email at 3:00 pm on August 12th informing the entire Council that the legal opinion was in their mailboxes. He said he went down to pick it up at 3:30. He said he understood that the other Councilors may have been busy and unable to pick it up until just before the meeting, but it was available. He said he was able to read the legal opinion and decide that the Charter amendment should not go forward.

Councilor DeDe said the unusual circumstance of having a resolution aimed at one specific employee's employment contract was the triggering mechanism whereby the City Attorney correctly recused himself from offering any opinion when the City Manager asked for it. He said the City Manager was correct in seeking an independent attorney not connected with the resolution. He said every attorney correspondence is by law confidential and only the Council can release it. He said any allegations that it was inappropriate to have the legal opinion confidential shows ignorance of the law, and no attorney would agree with that statement. He said everything that happened was very accurate and it was very ethical of the City Attorney to recuse himself from ruling on this issue. He said it was also appropriate for the City Manager, in his administrative role, to find someone to render a legal opinion.

Mayor Myers asked for a roll call vote on releasing the legal opinion dated August 12, 2009.

Roll Call Vote: 9/0.

3. ADJOURN

Councilor Weston made a motion to adjourn to Workshop; seconded by Councilor Callaghan.

Vote: 9/0.