



Taxation, Revenue, and Utilization of Expenditures (TRUE) Commission

Wes Benwick, Chair
Jason Fischer, Vice Chair
Joe Andrews, Secretary

Meeting Minutes.

May 5, 2011
4:00 p.m.

Attendance: Wes Benwick (Chair), Hiron Peck (dep. 5:03), Marcella Lowe, Thomas Martin, Joe Andrews, Ted Wendler, Diane Brown, Ryan Jones (arr. 4:16), David Lane, Marc El Hassan, Gamal Lyons, Ernest McDuffie

Excused: Mike McCollum

Absent: Mark Cowart, Ruth Arnold, Jason Fischer

The meeting convened at 4:03 p.m. with a quorum present.

Minutes

The minutes of the April 7, 2011 commission meeting were approved as distributed.

Committee Reports

Legislative Tracking Committee – Commissioner Andrews distributed a legislative tracking matrix and reported that the committee has been tracking several issues:

- 2010-856 – transient vendor location regulation: still pending in a subcommittee
- 2011-188 - \$1.5 million appropriation for construction of soccer fields at Patton Park: deferred in 3 committees pending outcome of an investigatory subcommittee meeting
- 2011-237 – temporary moratorium on collection of fair share and development assessment fees: deferred in committees
- 2011-241 – Comprehensive Plan text amendments to implement the new Mobility Fee: just introduced in Council this week and bears serious attention
- 2011-254 – resolution expressing support for Planning and Development Department’s “Creating the SPARK” study on revitalizing downtown through arts and culture: just introduced in Council this week and bears serious attention
- 2011-276 – imposing residency requirement for all City employees and board and commission appointees: Mr. Andrews considers this an unfair restraint of trade issue; the City has previously adopted, revoked and partially reinstated a residency requirement
- 2011-290 - \$640,000 grant/loan from the Northwest Jacksonville Economic Development Trust Fund to finance development of a barbecue sauce manufacturing and distribution center: just introduced in Council this week and bears serious attention

Commissioner Benwick requested an update on the project funded by the Northwest Jacksonville Economic Development Trust Fund a couple of years ago to finance the development of a truck wash facility. Staff will ask the JEDC for a project update.

Performance Committee – Commissioner Wendler reported that the committee had met just prior to the full Commission meeting and discussed the enormity of the task of analyzing and understanding just the City’s internal service funds, much less the budget as a whole. The committee plans to meet in early June for a day-long session to develop a list of potential budget cuts to suggest to the Finance Committee for their consideration during the budget hearing process. The Performance Committee sees a need for the TRUE Commission to deal with budget issues earlier in the budget preparation process and to make recommendations to the Mayor to have an impact on the development of the proposed budget, not waiting until the budget is drafted and presented to City Council to make suggestions.

Banking Fund Committee – Commissioner El Hassan reported that he had sent his draft report, circulated to the commissioners last month, to Chief Financial Officer Mickey Miller and City Treasurer Mike Givens for their review and comments. He received no substantive comments in response, so is prepared to submit the report to the commission for action.

Motion (Lowe): the TRUE Commission approves the draft report and recommendations for transmittal to City Council – **approved unanimously**.

SMG Issues Committee – Chairman Benwick reported that he will draft a committee report and distribute it to the commission for consideration at the June meeting. He has several questions that still need answering and will plan on calling a committee meeting for final discussion prior to the June commission meeting.

Nominating Committee – Chairwoman Lowe requested that a meeting be scheduled for Tuesday, May 10th at 1:00 p.m. just prior to the Ad Hoc Budget Review Committee meeting at 2:00 p.m. She solicited any further volunteers or nominees for the three offices.

Auditor’s Report

Tommy Carter of the Auditor’s Office reported that the office had released one report since the last meeting – #698 Audit of Miscellaneous Bank Accounts. The study covered several imprest checking accounts, which are accounts used to purchase small-value items on an occasional basis in a simpler and more cost-effective manner than using a full-blown procurement process. Several more departmental imprest checking accounts are in the process of being examined and separate reports will be issued on those findings.

Chair’s Comments

Chairman Benwick, referring to the minutes of the commission’s April meeting, agreed with Commissioner Lowe’s comments regarding the need for a new commissioner orientation session. He suggested 1:00 p.m. on Tuesday, May 24th just prior to the meeting of the Ad Hoc Budget Review Committee, with Commissioner Lowe chairing the effort.

Old Business

Commissioner Wendler raised the issue of unfunded pension liabilities as the pre-eminent challenge to the City’s fiscal future. According to a written opinion from the General Counsel’s Office the 30-year agreement between the City and the Police and Fire Pension Fund regarding modification of benefits through collective bargaining is not legal because it violates state law regarding the maximum length of collective bargaining contracts and because benefits cannot be covered by more than one contract. He noted that, despite information circulated by the Police and Fire Pension Fund regarding the recent recovery of the stock markets, the City’s pension funds are currently just recovering to their funding level from 2007 despite the years of contributions that have been made since then and the recent market

recovery. At this rate the funds will never recover quickly enough to be able to meet their obligations over the long term. It is a difficult problem and one that the City, the employee unions and the pension funds are loathe to face. At the April TRUE Commission meeting, CFO Mickey Miller stated that the City's biggest problem is the failure of most parties to recognize or admit that the unfunded pension liability is a huge problem. In his opinion the TRUE Commission has got to raise the alarm and get the general public to realize how serious this issue will be to the City's financial future because the politicians seem determined to ignore the problem.

Switching to a defined contribution system on a piecemeal basis for new employees will not solve the problem because it will siphon off funds from the defined benefit system and make it even less likely that that plan will be solvent enough to pay its obligations. One option for making the change might be to calculate the pension contributions made to date for all active employees and convert those amounts into contributions into a defined contribution plan for each employee. If the 30-year agreement were to be struck down by the courts then at least the City can begin negotiating with the unions over adjustments to pension benefits to make the system solvent. Commissioner Wendler will attempt to draft a resolution on the pension liability issue for consideration at the next commission meeting. Mr. Wendler also noted that Senate Bill 1128, passed yesterday by the Florida Legislature, which originally would have required all government pension plans to be defined contribution plans, was changed before final passage to remove that requirement, so there will be no help from Tallahassee on this issue. Chairman Benwick stated that it appears the only way to break the stalemate is going to be for some outside entity like Concerned Taxpayers of Duval County or some other citizen-based organization to sue the City over the status of the 30 year restated agreement and get it struck down. Perhaps a new mayoral administration will want to tackle this issue, but it's not likely.

New Business

None

Commissioner Comments

None

Public Comments

Bob Downey, former General Manager of SMG in Jacksonville, stated that the document the TRUE Commission recently received from the JEDC and circulated as the purported "white paper" mentioned in the Office of Inspector General's report and the JEDC's response to that report was not, in fact, the "white paper" that was referred to in those documents. The materials recently circulated by staff to the commissioners dealt with rebates of ticket sales revenues, not the issue of cash advances of ticket revenues to Live Nation before the promoter's events actually took place. Mr. Downey explained that the City's contract with SMG prohibits transferring ticket revenues to a promoter before an event has taken place, so that in the event that a production is canceled, funds will be on hand to make refunds to ticket purchasers. Live Nation wanted to change that practice and receive funds in advance of their shows. JEDC Executive Director Ron Barton indicated that this would require a change in the City's contract with SMG and requested a "white paper" from SMG explaining the need and providing a rationale for the change. SMG's attorney Paul Harden indicated that the company was not interested in reopening the contract, so the issue was dropped. Several months later Mr. Downey says he was told by the SMG corporate office in Philadelphia that a national agreement had been reached between SMG and Live Nation for local ticket revenues to be swept into a national account and transferred to Live Nation contrary to the City's contract and that he was compelled to sign the contract along with the other SMG local managers and the funds began to be transferred without the City's knowledge or agreement.

Mr. Downey stated that the information received from the JEDC and circulated recently had to do with a separate practice of SMG rebating a portion of the ticket revenues for an event to Live Nation as part of the consideration for Live Nation booking its shows into SMG buildings. In response to a question about whether this rebate

practice worked to the City's benefit or detriment, Mr. Downey stated that SMG has reported that it produced a benefit to the City of \$60,000, but his calculations applying the rebate rate to the previous year's events and ticket sales showed that the City was actually \$325,000 worse off under the new rebate system. The SMG corporate official who negotiated the national rebate agreement with Live Nation subsequently left SMG to become the head of Live Nation. In response to a question about how the rebates affected the bottom line of the City's contract with SMG, Mr. Downey stated that more revenue to the promoter, either directly or by means of a rebate, means less revenue to SMG and the City, but that's the price one has to pay for keeping the business of Live Nation, which is the largest entertainment promoter and ticket retailer in the country. His original rebate system was based on a sliding scale calculated on the amount of business the promoter brought to the city and would have been available to any promoter that did substantial business with SMG in Jacksonville. That was done with the City's knowledge. The change in the rebate policy did not require a contractual change; the change in the timing of transfer of ticket revenues to before a show occurred did require a contract change which never happened.

John Burns, CFO of SMG Jacksonville, stated that an event promoter is "on the hook" for almost all of the costs of producing a show, from paying the act to renting the facility to promoting the event, so promoters are always looking for ways to ensure the financial success of a show. He stated that Mr. Downey, without the knowledge of the SMG corporate office or legal counsel, drafted and entered into a rebate agreement with Live Nation that subsequently proved faulty and nearly led to litigation between SMG and Live Nation. The two companies subsequently worked out a revised rebate policy that headed off the threatened litigation and satisfied both companies' needs with regard to rebates. SMG has got to be competitive in the arena market with Orlando, Miami, Tampa, Atlanta, etc., so they have to keep Live Nation happy since they are the dominant company in the event promotion industry while also protecting the City's interests. Live Nation shops its shows to various arenas and takes the best financial deal, so venues have to compete for the business.

With regard to the transfer of ticket revenues before shows occur, the companies worked out a new agreement that provides that if tickets are bought at an SMG ticket window, SMG holds the dollars; if Live Nation sells the tickets, they hold the revenues. That practice does not violate the City's contract with SMG and has worked to the City's financial benefit. The Office of General Counsel reviewed the arrangement after it was mentioned in the Inspector General's report and has not indicated that it is problematic. SMG operates its facilities in the best interests of both the company and its clients (cities and counties). Their reputation is invaluable and they don't do anything that would compromise their credibility in the industry. Mr. Burns distributed copies of the latest ranking of arena venues based on ticket sales during the first quarter of 2011 by Pollstar, the international trade publication of the entertainment venue industry. The figures showed that Jacksonville's Veterans Memorial Arena was ranked 18th in the world for number of tickets sold in the first quarter, ahead of arenas in Atlanta, Los Angeles, Philadelphia, San Diego, and other major cities. He explained, in response to a question raised at a previous meeting about what value SMG provides to the City, that SMG's relationship with event promoters and their in-house staff of event recruiters, both at the corporate level and in Jacksonville, is responsible for the large number and variety of events the City attracts. SMG has three full-time event bookers at the corporate headquarters constantly communicating with promoters and producers to bring events to SMG buildings worldwide, and there is a local staff that that does the same at the local level. The fact that eleven of the top 50 arenas on the Pollstar list are SMG-managed facilities demonstrates the company's ability to attract events to their facilities.

Mr. Burns indicated that the fact that an SMG corporate employee took a management job at Live Nation had nothing at all to do with ticket revenue arrangements in Jacksonville. The event production and venue management fields are dominated by a relatively small number of companies, so movement from one to another is common in the field. He also stated that the "white paper" on ticket rebates provided to the commission was what they understood the commission to be looking for at its last meeting. There is also another "white paper" on the issue of timing of custody of ticket revenues and they will be happy to provide that to the commission as well. In response to a question about how customers would receive ticket refunds in the event a production does not take

place as advertised, Mr. Burns stated that SMG and Live Nation would each refund the tickets they sold through their distribution system. In response to a question about the ticket sales rebate policy, he stated that the policy applies only to Jacksonville, but SMG has similar agreements with Live Nation with varying rebate levels in many other cities, with the rebate levels depending on the amount of business the companies do in each market.

Next meeting

The commission's next meeting is scheduled for Thursday, June 2nd at 4:00 p.m.

There being no further business, the meeting was adjourned at 5:13 p.m.

Posted 7.20.11
5:00 p.m.

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