



CHARTER REVISION COMMISSION

Wyman Duggan, Chair
Mary O'Brien, Vice Chair

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August 25, 2009
5:00 p.m.

Meeting Minutes
August 13, 2009
City Council Conference Room A
Suite 425, 4th floor, City Hall

Attendance: Commissioners Wyman Duggan (Chair), Mary O'Brien (Vice Chair, arr. 9:06), Ed Austin, Martha Barrett, Bill Catlin, Beverly Garvin, Robert Flowers, Sr., Ali Korman, Gary Oliveras, Curtis Thompson, Geoffrey Youngblood, Jeanne Miller, Teresa Eichner
Excused: Jim Catlett, Mechelle Herrington

Invited speakers: Supervisor of Elections Jerry Holland; General Counsel Rick Mullaney

Staff: Jeff Clements – City Council Research Division, Steve Rohan – Office of General Counsel

The meeting was called to order by Chairman Duggan at 9:00 a.m. with a quorum present, followed by the Pledge of Allegiance and a moment of silence.

Supervisor of Elections Jerry Holland presentation

Supervisor Holland stated that he and the other constitutional officers would prefer to be elected rather than appointed. Nationally, trends run for and then against election of certain officials over time. Florida jurisdictions vary in whether they elect or appoint school boards and superintendents, and it does not appear to be related to the size of the jurisdiction. He acknowledges that there are valid arguments on both sides of the issue of election versus appointment, and it may be a matter of personal philosophical preference. The major competing rationales are appointment for the purpose of ensuring professional competence and qualifications versus the clear accountability to voters of an election. His research has also shown that appointed officials nearly always earn a higher salary than elected officials for similar jobs.

Mr. Holland does not believe the General Counsel should be elected, as that might tend to politicize the office and affect the legal opinions it renders. However he does see the need for a better appointment mechanism that gives more clients of the office (particularly the constitutional officers and the independent authorities) a bigger say in the selection of the General Counsel.

He believes the Supervisor of Elections should be an elected position so that it can be independent of the influence a mayor or general counsel might try to impose on electoral issues if the supervisor was merely an appointed department head. He cited the example from several years ago of the petition drive to place a charter amendment on a referendum ballot that would require the City to turn Cecil Field back over to the Navy in an attempt to restore the airport to a Navy master jet base. Mr. Holland felt pressured by the administration not to certify the petition and to keep the issue off of a referendum ballot despite the fact that he felt the petitioners had met the legal criteria for the question to be certified and the Office of General Counsel had not formally instructed him otherwise by means of a binding legal opinion. From his perspective, the independence of his office allowed him to run a fair election on a controversial subject once the requirements of the petition process were met.

Mr. Holland noted another model available to Florida charter counties of electing the constitutional officers as department heads reporting to a mayor. He knows of two counties that have tried the charter official model (Volusia and Orange) and Orange County has since gone back to more traditional method. He sees a danger in concentrating in the hands of one person (the mayor) the power to assess property, collect taxes, run elections, control law enforcement, and run every other operation of government. Dispersion of power has a valuable place in a system of checks and balances.

In response to a question from Commissioner Miller, Mr. Holland further explained the circumstances of the Cecil Field referendum issue. He stated that all petition-generated referendum questions are referred to the General Counsel for a review as to legality. The OGC felt that the legal precedent from a previous referendum petition drive (concerning mandated pension benefits for correctional officers) regarding the inability of a referendum to mandate that the City Council take a specific action made the Cecil Field question an improper one for a referendum, and therefore advised against placing it on the ballot. However he was not notified in the form of a binding legal opinion, so believed that the law compelled him to place the matter on the ballot because all of the petition requirements had been met and therefore the matter qualified as a matter of law to be put to a referendum.

Mr. Holland responded to further questions about charter officials in other counties and about his experience with the General Counsel's Office as a constitutional officer and a city council member. He stated that the OGC system needs some tweaks to improve it, not a complete overhaul that would weaken the concept of consolidation. He advocated a General Counsel selection system utilizing 5 votes – the mayor would have 2 votes, the School Board 1, the constitutional officers 1 collectively, and the independent authorities 1 collectively. A prior suggestion to allow the other officers and authorities to provide comments late in the process after a candidate has been selected and nominated gives insufficient opportunity for real input. Mr. Holland did not favor the election of a general counsel or other City department heads for purposes of enhancing accountability, as claims of independence, competing agendas and personal egos could make for a very difficult situation.

Mr. Holland discussed the merits of proposals to move the City elections from spring to fall. Proponents point to increased turnout by holding the elections in conjunction with federal and state elections that traditionally produce higher turnout, and the substantial cost savings of not holding a county-wide stand-alone election (\$3 million). Opponents argue that attention to local candidates and issues would suffer in competition with gubernatorial and presidential campaigns and that it would be harder for candidates to raise campaign funds in competition with other, higher-profile races. There are two resolutions currently pending in City Council to support moving City elections to the fall.

Rick Mullaney presentation

General Counsel Rick Mullaney stated that Jacksonville's Office of General Counsel is the best form of local legal representation in the state, and derived from the experience of the pre-consolidation governments that, collectively, hired 68 different lawyers and spent huge amounts of money on legal infighting. Article 7 of the City Charter that established the Office of General Counsel was revolutionary. The OGC is a 40-attorney law firm with 6 practice areas. He proposed 4 major themes for the commission to consider:

- 1) The General Counsel has a unique role to play in upholding the rule of law and defending the Charter. This will inevitably make the General Counsel unpopular with certain officials and authorities from time to time; that's just part of the job. General Counsels throughout the history of consolidation have faced some very large problems and dealt with unhappy clients along the way.
- 2) The OGC does not assign a dedicated attorney to each agency and department to serve as full-time in-house counsel. Every agency gets a share of the combined expertise of the whole firm, and lawyers aren't subject to "capture" by their client whereby they might become advocates for the interests of that department or official at the expense of the interests of the rest of the consolidated government. Lead counsels certainly develop expertise in the areas and agencies where they are assigned, but everyone is subject to working in other areas as the greater needs of the government dictate.
- 3) The OGC resolves several kinds of conflict. Legal – the OGC determines what the law says and the office speaks with one voice thereafter on that subject. Policy – the OGC does *not* advocate for one position over another or lobby on behalf of their client agency; policy decisions are left to policy makers. Federal and state law and various court precedents say that it is not a conflict for attorneys in the OGC to represent multiple parties in the same case.
- 4) The OGC gives legal advice but the client makes the final decision on policy issues and business deals. Assuming that some course of action is legal, the OGC does not opine on whether it is a good deal or smart decision or not. Again, that is the role of elected officials to determine.

Regarding the OGC selection process, Mr. Mullaney pointed out that the constitutional officers utilize less than 10% of the overall resources of his office, the City Council about 10%, and the City administration approximately 60%, so that ratio needs to be kept in mind when determining the weighting of votes in the selection process. In response to a question about conflicting opinions within the consolidated government, Mr. Mullaney stated that since consolidation there has not been one instance where an entity of the City government has hired a lawyer and taken the OGC to court to prove the superiority of their legal interpretation. The OGC has issued 370 binding legal opinions to settle interpretations of law to date. There are three methods available to overturn a binding legal opinion: 1) ask the State Attorney General for a superseding legal opinion; 2) change the law by means of a charter amendment; or 3) a third party outside city government could sue to have a court decide.

Mr. Mullaney stated that, despite a constant refrain to the contrary, the history of binding legal opinions does *not* indicate any bias on the part of the OGC toward agreement with the Mayor's positions. There is a natural tension between clients and attorneys in the consolidated government because every agency and department cares deeply about its mission and hates to be restricted or impeded from doing everything it can to try to achieve its goals, even if it comes in the form of legal advice from their attorney that takes into account the broader concerns of the entire consolidated city. Mr. Mullaney answered additional questions on the subject of attorney compensation, client confidentiality, and perceptions of conflict of interest by the OGC on the part of constitutional officers and independent authorities.

With regard to the City's Ethics Officer, Mr. Mullaney explained that for 10 years the City had co-ethics officers – John Jolly in the OGC and Carla Miller, a private attorney and volunteer member of the City Ethics Commission. The two positions have different functions. Mr. Jolly gives legal advice on specific matters of law and their application to particular facts or circumstances. Ms. Miller, now on the City payroll, does ethics training and education, public information, and answers and investigates calls to the ethics hotline. The City has several investigative authorities to whom ethics allegations can be referred for detailed investigation, including the Council Auditor, Inspector General and the State Attorney. In response to a question about potentially removing the Ethics Officer from the Office of General Counsel in order to remove any potential conflict of interest between the Ethics Officer investigating allegations of personal misconduct in the course of City business that the OGC might be called upon to defend, Mr. Mullaney stated that the OGC does not defend individual employees on ethics or Government in the Sunshine Law violations. The OGC represents the city corporately.

In response to a question about any changes resulting from the reports of past Charter Revision Commissions, Mr. Mullaney stated that previous incarnations of the commission had been relatively ineffective in getting charter changes made. Commissioner Barrett pointed out the creation of at-large residence areas for the election of the City Council's at-large members, and Chairman Duggan noted the imposition of two-term limits on elected officials which was suggested by a charter revision commission but eventually came to be enacted as a result of a petition drive and referendum. Commissioner O'Brien requested that the commissioners be provided with copies of the results of the previous charter revision commissions.

In response to a question about the most important changes that could be recommended to help strengthen the charter and thereby the city government, Mr. Mullaney urged the group to keep in mind the central principles that underlie the consolidated government: 1) centralized financial authority; 2) centralized legal services; and 3) a strong mayor/council form of government. The mayor must be ultimately responsible, within a system of checks and balances, for the performance of the government, and the whole enterprise must speak with one voice.

With regard to his attendance at meetings of the mayor's staff, Mr. Mullaney indicated that he does attend policy and staff meetings in the capacity of a legal advisor, but does not attend meetings on, or offer any opinion or advice on, matters of lobbying or political strategy. He feels his long tenure, much longer than any previous general counsel, is unusual and results from the personal preference of a particular mayor who asked him to stay on the job from one administration to the next, which is very unusual. He believes the nature of the office and its work has changed considerably over the 40 years of consolidation. In the early years the first two or three general counsels had to make numerous difficult decisions that established and interpreted the framework of the charter and the workings of the consolidated government. Since those early days the job has evolved more into the management of a multi-disciplinary law firm dedicated to client service. Still, the General Counsel needs to have a firm grasp of Jacksonville's very unique consolidated government structure and charter, and he feels a short-time general counsel (2 or 3 years), particularly if that person had never had any knowledge of or participation in the consolidated government, would be at a tremendous disadvantage in trying to be effective and understanding all the history and nuances at work.

Commission discussion

Given the short time remaining, discussion of the commissioners' issues of interest was deferred to the next meeting. Chairman Duggan stated that he had received issue lists from most of the commissioners and that there were several issues common to most lists, while others received only a single mention.

Motion: Commissioner O'Brien moved to authorize the Chairman to invite a speaker(s) to the next meeting to address a topic that was widely recommended for study by numerous commissioners – **approved.**

Chairman Duggan will circulate the combined list of issue ideas to the commissioners prior to the next meeting.

Public comment

- John Keane, Administrator of the Police and Fire Pension Fund, requested a copy of the document from which Commissioner O'Brien was reading at the last meeting regarding pensions, and stated that he would be happy to address the commission at a future meeting on the subject.
- Conrad Markle stated that there is a problem with the system when citizens like himself, when dealing with a city department on some issue, are informed by departmental representatives that they are to communicate only with the Office of General Counsel and then the OGC is unresponsive to requests. Steve Rohan said he would convey that statement to the General Counsel for his information. Mr. Markle also questioned the ability of the City Council to consider and possibly adopt the resolution now pending that would express the City's opposition to the Hometown Democracy constitutional amendment that will be on the November 2010 general election ballot. Can the Council legally take such a position?

There being no further business, the meeting was adjourned at 11:59 a.m.

Jeff Clements, 630-1405
Posted 8.25.09
5:00 p.m.

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