

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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**CHARTER REVISION COMMISSION**

**COMMISSIONERS SCHELLENBERG NOTICED MEETING MINUTES –**

**OFFICE OF GENERAL COUNSEL ISSUES**

**Don Davis Room, 1st floor, City Hall**

 **January 16, 2020**

**11:30 a.m.**

**In attendance:** Commissioners Matt Schellenberg, Ronald Swanson, Lindsey Brock (arr. 12:15)

**Also**: Jeff Clements – Council Research Division; Jessica Matthews and Ladayijah Nichols – Legislative Services Division; Paige Johnston, Susan Grandin and Miriam Hill – Office of General Counsel; Chuck Arnold – retired judge and former General Counsel; Jerry Holland – Property Appraiser; Tim Johnson – Police and Fire Pension Fund Executive Director; Ronnie Fussell – Clerk of the Courts

**Meeting Convened**: 11:32 a.m.

Commissioner Schellenberg convened the meeting and asked Judge Arnold to give a historical perspective on the Office of General Counsel, where he was an attorney at the outset of consolidation and eventually was appointed General Counsel. Mr. Arnold said he was involved in briefing and arguing some of the seminal cases involving the legality of consolidation and its implementation in the early years. Judge William Durden, the first General Counsel of the consolidated government, issued hundreds of legal opinions defining every aspect of the powers and authorities of the new city government. Mr. Arnold said that over the decades General Counsels have typically been one of two types. Originally they were prominent attorneys in the city or perhaps a retired judge who did the job for a few years as a matter of civic responsibility then returned to private practice. The later practice has been for the General Counsel to hold the job for longer terms, sometimes spanning mayoral terms.

Judge Arnold said that the original concept of the consolidated government was that it would incorporate every agency and entity of the city and county governments, including the independent authorities, the School Board and the constitutional officers (except for the Clerk of the Courts and the Sheriff, which were mandated by the Florida Constitution to remain independent state officers). The ideal was never attained, with many entities remaining semi-independent but under the umbrella of the consolidated government. The original Ordinance Code placed legal services as a function under the Department of Central Services and did not say anything about binding legal opinion authority. Binding legal opinion authority came about in 1985 by order of General Counsel Gerald Schneider. An opinion issued yesterday by Judge Gary Wilkinson in the School Board’s legal challenge to the City Council’s authority to decline or delay authorization of a local option sales tax referendum is potentially groundbreaking. The consequences are that the School Board can hire outside attorneys if there is a substantial conflict with the City government, but otherwise must continue to utilize the Office of General Counsel on a regular basis for its normal business.

Mr. Arnold said the General Counsel, regardless of the definition of their powers, must comply with the Ethics Code of the Florida Bar Association. He has long been concerned about the degree to which General Counsels have assumed the power to issue binding opinions, sometimes without the benefit of having fully briefed legal arguments by attorneys arguing the opposing sides. He said he completely disagreed with the decision by the current General Counsel to authorize the City Council to hire an outside counsel to advise it with regard to JEA privatization issues – that flies in the face of the purpose of consolidation.

Mr. Arnold suggested several fundamental questions for the CRC to ask:

1. How much does the OGC cost (including pension costs) and could equally good service be obtained at lower cost via privatization of some functions? Some work is already being farmed out now and perhaps more could be, saving personnel and benefits costs.
2. Are the clients happy with the representation they’re getting?
3. Should some independent authorities and the constitutional officers have legal counsel apart from the General Counsel’s office due to their state-mandated responsibilities?
4. How is the General Counsel selection process working?

Property Appraiser (and former Supervisor of Elections and City Council President) Jerry Holland said that the quality of the OGC attorneys has never been in question, the issue has been their time and attention given their other responsibilities. They often work on tasks at the last minute because they work for other agencies as well. His office has very little say over which attorney is assigned to serve it, unlike if they had hired a private firm. The independence of general counsels from the influence of the mayor seems to have varied over the years and the user agencies have no recourse if they disagree with a general counsel’s decisions. Mr. Arnold said City Council now has authority to discharge a general counsel as of a few years ago following a recommendation by the Task Force on Consolidated Government, which also added the 2 attorneys representing Jacksonville on the Florida Bar Board of Governors to the General Counsel Selection Committee. Commissioner Schellenberg said that in the last General Counsel selection process it was clear who the Mayor was going to appoint, so that discouraged anyone else from applying.

Clerk of the Courts Ronnie Fussell said his office is mostly state-oriented and state-funded (85%, to only 15% local functions and funding). He has talked to OGC about getting an attorney permanently assigned to his office to answer time-sensitive questions from judges and attorneys immediately. His office pays the OGC enough in legal fees each year to pay for a dedicated attorney. Commissioner Swanson said it seems to him that there are two separate issues – structure and operations. Structure could be dealt with in the Charter, while operations would be a different matter. If the CRC can identify a problem, then how do you adjust the Charter to resolve that problem? Mr. Fussell thinks his issues could be dealt with operationally with the assignment of a dedicated attorney for at least a day or two a week.

Tim Johnson, Executive Director of the Police and Fire Pension Fund, said that the ruling yesterday will cause the City’s independent authorities and constitutional officers to question their relationship with the OGC and to think about their need or desire for independent counsel. Judge Arnold said yesterday’s ruling applied primarily to the School Board so doesn’t really affect the other entities, but may open the door to outside counsel if a real, substantive conflict of interest arises. Mr. Swanson said the ruling is likely to be appealed, possibly as far as the Supreme Court if constitutional issues are identified, but for now it only applies to the particular parties and the specific question involved and it’s premature to say what the long-range impacts may be. Mr. Johnson said the OGC was challenged and a judge ruled that they could be validly challenged, and asked what the impact of that might be. Will it enable other agencies to pursue challenges of their own? Mr. Arnold said he thinks this might be a one-time issue with a uniquely independent agency and not have much impact on other less independent agencies. It might lead to the OGC allow agencies to hire outside counsel to argue against OGC attorneys in court to solve thorny problems.

Mr. Arnold had several recommendations for how the CRC could proceed: 1) study the OGC, its budget, number of attorneys, and use of outside counsel and determine if we’re getting the best bang for the buck. It’s getting harder to have the right kind of expertise in very complicated areas of law, so maybe it’s better in some cases to hire that specialized expertise. 2) Talk to the clients and see how happy they are with the service they’re getting. 3) Talk to some former General Counsels and see what their perspective is on potential problem areas and solutions.

Mr. Fussell said he is not so much worried about Charter changes as just getting the appropriate level of service when it’s needed. Charter changes could potentially be made in the General Counsel selection process. Mr. Holland thought having a seat at the table in the selection process would give the constitutional officers and independent authorities a little more clout with whoever is ultimately selected. Mr. Fussell suggested at least inviting them to sit in on the process, even if not as a voting member, to let their interests be known.

CRC Chair Lindsay Brock said he was part of the legal team that represented former Clerk of the Courts Henry Cook in his challenge to term limits and the original ruling was very narrowly focused on that issue, but by the end of the appeals process it applied to all the constitutional officers. The same thing could happen again if the School Board’s challenge is appealed far enough. He questioned if the Charter Revision Commission should get involved in making recommendations in this area before it knows what the ultimate ruling will be. Judge Arnold said there is so much established law and precedent around the rest of the consolidated government that it probably won’t have much effect on the rest of the government. It could possibly impact the Sheriff and Clerk of the Courts who are specifically mentioned under Article 8 of the Florida Constitution and therefore are somewhat different from the rest of the constitutional officers. Commissioner Swanson cautioned that this is only a non-final order on a motion to disqualify counsel and said there are lots of appeals and machinations still available.

Public comment

John Nooney said Jacksonville’s Charter is unique. He advocated for a Charter amendment requiring projects supported by the DIA and CRAs that touch waterways to allow public access. He cited the example of Ordinance 2013-384 (leasing the Armory building for $1 to a private entity) which didn’t make provision for public access.

**Meeting adjourned:** 12:52 p.m.

Minutes: Jeff Clements, Council Research Division

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