

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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**CHARTER REVISION COMMISSION**

**GOVERNMENT STRUCTURE AND PRESERVING INSTITUTIONAL**

**KNOWLEDGE SUBCOMMITTEE MEETING MINUTES**

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

 **January 23, 2020**

**9:00 a.m.**

**In attendance:** Commissioners Ronald Swanson (Chair), Jessica Baker, Nelson McCoy, Heidi Jameson, Matt Schellenberg (arr. 9:37)

**Also**: Paige Johnston – Office of General Counsel; Jeff Clements and Anthony Baltiero – Council Research Division; Juliette Williams and Kendra Mervin – Legislative Services Division; Melanie Wilkes – Council Staff Services

**Meeting Convened**: 9:04 a.m.

Chairman Swanson convened the meeting.

Approval of Minutes

The minutes of the committee meeting of January 16, 2020 were **amended** on page 3 [“Ms. Jameson gave her update noting that ~~during~~ from her research on ~~promoting~~ nonpartisan elections she ~~has changed her mind and~~ believes that pursuing nonpartisan elections is not the way to go.”] and then **approved unanimously as amended.**

Guest Speaker – General Counsel Jason Gabriel

Chairman Swanson introduced Mr. Gabriel and briefly outlined his interesting and varied background. He asked Mr. Gabriel to make an opening statement, then take questions from the members and discuss any recommendations he might have regarding suggestions for improving the General Counsel’s operations via Charter changes.

Mr. Gabriel outlined the scope and functions of his office, which acts as the in-house law firm for the City and all of it independent authorities and the School District. The office is one of the largest law firms in the city, and is organized into 5 departments – 3 litigation-based, plus the Legislative Affairs Department (serving the legislative needs of the City Council) and the Government Operations Department (handling contracts, transactions, boards and commissions, administrative law, etc.). The office also utilizes outside counsel to handle special needs, conflicts of interest, etc. He said that the position of General Counsel has numerous and complex responsibilities and his personal experience has led him to believe that the “founding fathers” of consolidation had two great ideas with regard to the General Counsel. First, the power to issue binding legal opinions drastically reduces intra-governmental litigation, which was one of the goals of consolidation. The power should be and now is seldom used, but is fundamentally important. Second, the power of the General Counsel’s office helps to unify and streamline the operation of government.

He addressed the long-standing allegation that the General Counsel, having been appointed by the mayor, generally represents the mayor’s priorities and preferences. He quoted from the Blueprint for Improvement II’s findings on the Office of General Counsel, which noted that 70-90% of the day-to-day functions of that office relate to executive branch functions (personnel, procurement, contracts, real estate, liability issues, etc.). One outcome of that report was a referendum (overwhelmingly approved by the voters) that made several Charter changes with regard to the General Counsel’s qualifications, selection, and removal. He believes that, as a whole, the Charter provisions relating to the General Counsel are basically solid; only minor tweaks might be needed or could be addressed by administrative changes rather than a full-blown Charter amendment. One area for consideration might be in the area of binding legal opinions. He described his process of developing binding legal opinions by means of having several attorneys brief the different sides of the issue and arguing the case to him, then doing his own research if necessary and arriving at a final decision on what is right. He recognizes the inherent challenges and dissatisfaction that process might generate for some parties, but believes that General Counsels have long acted impartially in the best interest of the City government as a whole.

Commissioner Jameson said that she believes the strong mayor form of government is a fundamental positive feature of the consolidated government, but City Council also has substantial power. Mr. Gabriel agreed that both sides have considerable power in the context of a federal-style checks and balances system of government. The council holds the power of the purse, the power to confirm or not confirm appointees, the power to enact ordinances, etc., so can well hold its own. In response to a question from Ms. Jameson about other areas of the Charter that might merit changes, Mr. Gabriel said he thinks the degree of independence of the independent authorities might be deserving of thought, with a closer tie to the city government being one of the major points of consolidation.

Commissioner Baker asked for a discussion of the ethics codes by which attorneys in Florida are bound and how that impacts on their work for the City. Mr. Gabriel said they are bound by the ethics code and all the rules and of the Florida Bar, but also have the additional responsibility to comply with Florida’s Government in the Sunshine open meeting and public records laws, which adds a different level of complexity. It impacts on what has to be done in a public forum (for the Council) versus a private forum (for the Mayor and executive branch), which can lead to some tension because some actions are more public than others. In response to a follow-up question, Mr. Gabriel said that the last 6 or 8 months have been very unusual in terms of major controversy involving his office, and that such citywide public controversies tend to ebb and flow over a course of many years. He said that a majority of the problems and issues that arise are settled quietly and internally without a great deal of fanfare. The need for binding opinions is very rare, and they are only issued when absolutely needed and when they are requested by a client.

Commissioner McCoy said that he believes the public would benefit from an explanation of how the General Counsel’s decision-making process works to engender more confidence that the process is fair and unbiased. Mr. Gabriel agreed that would be helpful for public understanding. Mr. McCoy also suggested that the public would have more confidence in the office if the General Counsel had a greater appearance of complete independence from all parties. Mr. Gabriel said he tries to do that by delegating a great deal of authority to his deputies and acting as an impartial arbiter when conflicts arise. He agreed with Mr. McCoy’s suggestion that his office could use a few more attorneys due to the volume of workload. In response to a question from Chairman Swanson, Mr. Gabriel described the process by which his office selects, hires and pays outside counsel when needed.

Chairman Swanson noted the difference between Charter-based issues and operational issues that can be addressed via administrative or policy changes. He believes that most of the issues the CRC has heard about fall into the area of needing administrative solutions rather than Charter changes. He asked Mr. Gabriel to describe how his office resolves conflicts between constitutional officers. Mr. Gabriel said that the Florida Legislature granted special powers to Jacksonville’s consolidated government via its charter (which is in the Florida Constitution), some of which may actually trump usual state laws in some areas. In response to a question about whether the OGC has an internal ethics officer that keeps an eye out for potential conflicts, Mr. Gabriel said it does. Chairman Swanson said he has developed a considerable respect for the City’s charter, but thinks there might be a need for a tweak regarding access to attorneys.

Commissioner Schellenberg thanked Mr. Gabriel for his accessibility to council members and his confidentiality during his term of office. Mr. Schellenberg asked Mr. Gabriel his opinion on hiring more attorneys versus reducing the size of the office and hiring more outside counsel. Mr. Gabriel said it is a legitimate policy issue for debate. He didn’t know whether the finances worked better for in-house versus outside counsel, but is willing to explore that option. Mr. Schellenberg asked about the policy of assigning OGC attorneys to be resident full-time at the independent authorities. Mr. Gabriel said that has been tried and there are pros and cons to the arrangement, with the embedded attorney at the independent authority sometimes becoming so aligned with the client agency that conflicts ensued with the rest of the OGC. He said he plans for the next attorney hired to serve JEA to be its full-time attorney, but to be housed back at City Hall. In response to a question from Mr. Schellenberg about whether the City Council should have several appointments to the JEA board and have the ability to prevent the Mayor from unilaterally removing JEA board members, Mr. Gabriel said those are policy questions worthy of discussion.

The committee was in recess from 10:14 to 10:20.



John Nooney requested that the CRC propose a Charter amendment guaranteeing public access to waterways in any project of the DIA or community redevelopment areas that has public financing. 2017-1-E regarding trespass subjects citizens to having their watercraft seized and to being banned for one year from the waterways. He encourages more tourism in Jacksonville.

Committee Discussion

Commissioner Jameson distributed and discussed a research paper on non-partisan elections and said that she had posed a series of questions to Paige Johnston for the OGC to research (i.e. is the Mayor a constitutional officer and therefore not allowed to be non-partisan pursuant to a Florida Supreme Court ruling). She opposes non-partisan elections but wants the CRC’s report on the issue to be thorough, regardless of what decision is made. Chairman Swanson agreed that topics on which the CRC does not make a recommendation are still worthy of exploration and some explanation for the public record about why a recommendation was or was not made.

On the subject of ranked-choice voting, Chairman Swanson said he would develop the committee’s position paper despite not being supportive of making that recommendation. Commissioners McCoy, Jameson, Baker and Schellenberg were also not supportive of ranked-choice voting. Mr. Swanson’s report will summarize the research and recommend no proposal on the subject.

On the subject of the Council President being elected to a multi-year term, Commissioner Baker said it appears the committee’s consensus was that it was a policy decision to be made by the City Council. Commissioners Jameson, McCoy and Schellenberg agreed that it was not a Charter issue so no recommendation should be made. Mr. Schellenberg felt that a one-year term as President is inefficient and the learning curve in the job merits at least 2 years, but that most Council members prefer to keep the one year practice for various reasons. He believes the real power lies with the committee chairs. Ms. Baker suggested a Charter amendment becoming effective in 2031 to make the position a two-year position, although she is conflicted about whether it should be left to the Council to decide how its leadership works. She said that the committee process in Jacksonville does not kill bills in the same way that the committees in the Florida Legislature can kill bills and keep them from the full body. Chairman Swanson said that in his experience as a judge, most judges don’t like constraints on their ability to impose sentences by means of mandatory sentencing guidelines. He believes the City Council feels the same way about selecting its president and he is not inclined to limit the Council’s discretion in that area. Ms. Baker thought it would be worth the committee’s time to at least explain the arguments for and against the proposal for the record. The consensus of the committee was not to make any comment on the issue.

On the subject of General Counsel issues, Mr. Schellenberg said he is conflicted about what to recommend and sees valid arguments on all sides of the issue. He at least believes a change in the selection method is needed to include more viewpoints and representation of more clients.

On the subject of term limits, Commissioner McCoy noted that Property Appraiser Jerry Holland had recommended a 3-term limit and the Task Force on Consolidated Government had recommended a 3-term limit for City Council members. Nashville recently voted down a proposal to expand its limit from 2 to 3 terms and Atlanta has a term limit for its mayor but not for its city council. He recommended making 3 separate recommendations to expand from 2 to 3 terms for the city council, mayor, and constitutional officers.

Next meeting: January 30th, which will feature commissioner presentations and hopefully closure on the outstanding issues.

Commissioner Jameson asked about the process for reaching closure on all issues by the committee reporting deadline of February 28th and whether the committee would be reporting out to the full CRC on January 31st. The group felt they would be ready to make reports on the non-partisan elections, ranked-choice voting and moving City elections from spring to fall by next week’s commission meeting. Commissioner Baker asked if the committee wanted to tackle the issue of reducing the size of City Council as suggested by Council Member Rory Diamond at a previous meeting. That will be discussed at the next meeting, along with term limits. Paige Johnston reminded the group that there is a public participation requirement before any final votes are taken on recommendations. It would be helpful to have the topics to be voted upon listed on the committee’s agenda so the public has full opportunity to be aware that recommendations are going to be subject to voting.

Public participation items at the next meeting – non-partisan, ranked choice voting, change election dates

Non-voting items – term limits, size and makeup of city council

Commissioner Baker asked for clarification on the recommendation to change election dates from the spring to the fall and when to hold the fall primary election. The group agreed that the same August/November schedule used in the even-year general elections made sense.

**Meeting adjourned:** 11:10 a.m.

Minutes: Jeff Clements, Council Research Division

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Posted 1.24.20 2:00 p.m.