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**CHARTER REVISION COMMISSION
COMMISSIONERS SCHELLENBERG AND GENTRY NOTICED MEETING MINUTES
OFFICE OF GENERAL COUNSEL AND JEA ISSUES
Don Davis Room, 1st floor, City Hall**

**February 5, 2020
1:30 p.m.**

In attendance: Commissioners Matt Schellenberg, W.C. Gentry, Lindsay Brock, Frank Denton

Also: Paige Johnston – Office of General Counsel; Jeff Clements – Council Research Division; Juliette Williams – Legislative Services Division

Meeting Convened: 1:30 p.m.

Commissioner Schellenberg convened the meeting and the attendees introduced themselves for the record. Commissioner Gentry said he is interested in the proposition that the General Counsel's position has become politicized over the years, less independent than it was in the early years when General Counsels served only for a few years and were seemingly not so closely tied to the mayor. He feels that there is a perception in the city today that the General Counsel is acting as an arm of the executive branch and can be controlled by the mayor. Mr. Schellenberg said that the recent situation with the School Board and its request for placement of a sales tax referendum on the ballot, where the School Board found itself unable to take any action because of the advice by the General Counsel that it could not retain independent counsel to challenge his ruling, was also troubling to him.

Mr. Schellenberg said believes that a charter amendment changing the selection mechanism for the General Counsel might be in order to give all the various agencies represented by the General Counsel more of a voice and weight in the process. He thinks the process currently seems to rubber stamp the mayor's preferred candidate. He also believes that the inability of parties to challenge a ruling of the General Counsel (because only the General Counsel can authorize legal challenges and controls the assignment of counsel) needs to be examined, as well as looking at a means to return to the original concept of the General Counsel as a quasi-judicial, independent arbiter among OGC attorneys arguing opposing sides of thorny questions. Commissioner Brock cautioned against using a permanent Charter amendment as a means of addressing what may be a temporary political/personality issue. He also cautioned that the Commission needs to issue its final report by March 31st and may not have time to devote sufficient time and attention to this very important and complex issue in the time left. Commissioner Gentry said Jacksonville's charter creates sometimes bizarre circumstances with regard to

the independent authorities and the constitutional officers who were created in a variety of ways under a variety of state and local authorizations. He believes that's why the judge ruled as he did with regard to the School Board's authority to call for a sales tax referendum, because the School Board is much more of a state entity and independent of the City than the other authorities and officials. He thinks that makes for a very confusing situation with regard to the power of the General Counsel to bind those various agencies with his opinions.

Commissioner Schellenberg noted that the JEA's last two attorneys assigned to it by the OGC resigned from their positions, apparently because of conflicts with the former CEO of JEA. He questions the extent to which the JEA CEO has the ability to demand a change of attorney from the OGC.

Retired Office General Counsel attorney Tracey Arpen said that he believes the perception of the change in the role of the General Counsel occurred when then-General Counsel Dawson McQuaig was identified so closely with then-mayor Jake Godbold. He suggested that the General Counsel be considered as a quasi-judicial position and be bound by the Judicial Code of Conduct and not be permitted to attend political functions and donate to political candidates and causes. He considers himself a proponent of consolidation and generally likes the way the office has been run over the years. He disagrees with an OGC attorney being made an officer of an independent authority to the extent that they are considered a part of that authority's staff and to have a conflict with the OGC. He advocated for a return to the old system of General Counsel selection in which the Selection Committee actively recruited high quality candidates and the mayor selected from among their nominees rather than the current system in which the committee opines on recommendations generated by the mayor and on any independent candidate who might offer themselves for consideration. He does believe that the mayor should carry more weight in the process than the independent authorities and constitutional officers because the City proper constitutes a larger percentage of the work of the office than those others.

Commissioner Denton said he believes the credibility of the OGC has been undermined in recent years by some of its opinions and the perception that the General Counsel is the mayor's attorney. He believes the general public expects the CRC to study and opine on this issue because of the controversies in the last year or two. He noted the Council Member Boylan offered last week to introduce legislation to extend the CRC's term for 60 days to allow it to delve into additional issues of great importance.

Commissioner Gentry questioned how the General Counsel could only now be investigating the propriety of JEA's privatization-related contracts when presumably the attorney assigned by the OGC to JEA was reviewing matters. He thinks that's the way it would have worked in a private law firm, with attorneys assigned to clients reporting back to the firm's management periodically about their work. This became an issue recently when the OGC's designated JEA attorney recently resigned. Commissioner Brock felt that it would be premature to make recommendations on charter changes relating to JEA until we understand what really happened and why, and determine if a structural fix is needed or if this is a temporary issue related to the people currently or until recently in office.

Commissioner Denton suggested the need for research on how other consolidated governments select their general counsel. Commissioner Gentry felt that since the OGC has tremendous power (as interpreted by the General Counsels over the years), it might make sense for the General Counsel to be independent of the mayor and act almost as an independent authority servicing all the other entities of government. Commissioner Schellenberg suggested perhaps recommending a code of conduct for the General Counsel and making some changes in the selection methodology. Commissioner Brock noted that the judicial code of ethics (particularly the prohibition against political activity) has been challenged as a violation of the First Amendment rights of judges (to freedom of speech and freedom of association) up to the Florida Supreme Court, so that needs to be taken into consideration when deciding how far to apply judicial ethics to the General Counsel. Commissioner Denton said the CRC could offer to the City Council to look into OGC issues if the Council felt that would be helpful and was willing to extend its reporting date. Commissioner Brock felt that the CRC might be qualified to address the OGC selection method, but was

not qualified to deal with how to change the binding opinion authority, separation of powers, and other truly fundamental powers. He thinks those kinds of issues would deserve much more time and attention than the CRC can devote to it in a 60 day extension. Commissioner Denton suggested that at least the CRC could identify crucial OGC issues to the City Council as worthy of study. Tracey Arpen recommended that at least Canon 7 of the Judicial Code of Conduct (inappropriate political activity) be applied to the General Counsel. Commissioner Gentry said the law on standing in Florida has become very rigid and conservative over the last few decades and that as a result, virtually no one has standing to challenge decisions in many cases.

Regarding JEA, Commissioner Schellenberg felt that it is incumbent on the CRC to at least say something about the events of recent months because the public will expect that so massive an issue will be addressed. Commissioner Denton suggested that the issue of JEA's authority to get into other lines of business is definitely a charter issue that might be susceptible to a recommendation. Commissioner Gentry expressed surprise at the power of the mayor to completely overhaul the JEA board at his own discretion and felt that completely contradicted the supposed independence of the authority. Tracey Arpen noted that the mayor's authority to remove the JEA's board members requires concurrence of the City Council by a 2/3 vote, but that requirement didn't apply in this instance because the board members all submitted their resignations when requested by the mayor and were not removed without their consent, which would have triggered a Council vote. He noted that the mayor's removal authority varies from authority to authority.

Commissioner Brock said that with regard to both the JEA and OGC issues, the commission could identify and describe the issues that have been raised during the CRC's deliberations without making any recommendations. He recommended that that CRC transcripts be reviewed for JEA and OGC issues and potential recommendations that have been discussed.

Meeting adjourned: 3:01 p.m.

Minutes: Jeff Clements, Council Research Division
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