



**OFFICE OF THE CITY COUNCIL  
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**CITY COUNCIL WORKSHOP  
CURRENT STATUS AND FUTURE NEEDS OF THE OFFICE OF GENERAL COUNSEL**

**Meeting Minutes**

**April 21, 2023  
9:00 a.m.**

**Location:** Lynwood Roberts Room, 1<sup>st</sup> floor, City Hall

**In attendance:** Workshop Members Brenda Priestly Jackson and Terrance Freeman

**Also:** Council Members Michael Boylan and Randy DeFoor; Maritza Sanchez – Legislative Services Division; Jeff Clements – Council Research Division; Steve Cassada – Council Public Information Division; Jason Teal and Mary Staffopoulos - Office of General Counsel; Brian Parks – Council Auditor’s Office; Markelo Spivey and Gerrie Ford-Harden – ECAs; Charles Cofer – Public Defender

**Meeting Convened:** 9:10 a.m.

Chairwoman Priestly Jackson convened the meeting and introduced the guest speakers – JEA Managing Director Jay Stowe and School Board Members Warren Jones and Daryl Willie.

Jay Stowe, Managing Director of JEA, said the General Counsel’s Office provides the JEA with very good service and he thanked the staff for their great support. The authority is a huge enterprise with 2,100 employees. He questions whether the language in the City Charter saying the Office of General Counsel (OGC) will provide JEA’s legal service means that they have to do it in-house. He thinks it could mean the OGC oversees contracting for outside counsel. Mr. Stowe said JEA’s work is being slowed down because of the OGC’s workload and the lack of enough full-time employees dedicated to JEA. The authority has requested 7 dedicated attorneys from OGC and currently has 3 full-time with others carrying out JEA tasks on a part-time basis. He said both quantity of attorney time availability and the capacity to address specialty areas of law particular to JEA are problematic. JEA feels it could use outside law firms that specialize in utility work and would like for the General Counsel to authorize them to hire outside counsel to provide those services. Mr. Stowe said sometimes the lack of attorney capacity is slowing things down and he’s concerned that the few OGC attorneys assigned to JEA are being overworked. JEA does hire some outside counsel on a part-time basis. Specialized needs include procurement of fuel,

compliance with utility regulations and the like, but the workload for non-specialty needs (personnel, contracts, etc.) is also problematic.

Mr. Stowe said JEA is a member of the Large Public Power Council, an organization of publicly owned utilities like JEA, although primarily just electricity providers, and many of those utilities have substantially more full-time attorneys than JEA does. He said JEA has no intention to “go rogue” by hiring its own attorneys without OGC approval but does need to find a resolution to its problem with attorney staffing by having more attorneys in-house. They feel they need 7 full-time attorneys to meet their legal needs.

CM DeFoor said JEA is big and complex entity and needs the proper attorneys to meet their specialized needs. General Counsel Jason Teal said he understands JEA’s needs and knows that the OGC is not meeting those needs satisfactorily. He said there are several different challenges that prevent him from providing the level of service desired. Legal constraints include an Ordinance Code limit on when outside counsel can be hired, which is limited to the need to acquire specialized knowledge in a particular field or in case of internal conflicts of interest; everything else has to be done in-house staff. Another constraint is the number of attorneys they can hire at the rate of pay the OGC can offer. They have 4 classes of attorneys each with a salary range. The public sector can’t compete with the private sector on attorney salaries (the OGC can’t realistically charge City departments \$500 or \$600 an hour for the services of its most experienced attorneys). Mr. Teal said that as the manager of the law firm, he also has to consider fairness and morale in the OGC if attorneys serving some agencies (like JEA) are paid much more than others are paid. Based on the 48 attorney slots he has available now, he is able to give JEA 3 more attorneys and is actively recruiting but can’t find qualified applicants who have the skills and would work for the rate the City can offer. OGC doesn’t have the time to train employees to shift from one field to another, so they need to hire experienced attorneys in the area needed.

CM DeFoor said she understands the practical problems, but JEA needs to get the service it requires to run its business properly. OGC is going to have to pay the market rate to get the talent and experience it needs, and JEA can pay for that for its attorneys. The only alternative is to hire outside counsel to fill the gap. Mr. Teal said it is problematic to pay outside counsel a higher rate to perform functions OGC could do in-house in areas such as personnel matters or contract – is that the best use of taxpayer funds? Jay Stowe said he understood that there may have been an OGC ruling in the past that said outside counsel could be hired for more than just specialized needs. JEA is ready and willing to pay for more legal assistance and needs to do so to get the volume of its work done in a timely manner. The current delays in getting necessary work done timely are costing JEA money.

Chairwoman Priestly Jackson said the workshop will hear next week from the Council Auditor’s Office and that will wrap up the work and the group will decide what legislative changes need to be recommended to address identified problems.

CM Boylan asked if there are formal parameters for OGC oversight of outside counsel. Mr. Teal said the Charter says the OGC will provide all legal services for the consolidated government, but there are no real details about oversight. He has weekly management meetings that include the attorneys for the School Board and JEA who are resident in those agencies, and the lead attorneys for those agencies are very experienced government attorneys who know how the OGC operates. Consistency across the consolidated government is important so everyone gets the same legal advice and service. Mr. Stowe said he agrees with that consistency within the OGC imperative and thinks that can be accommodated with the system he has proposed for JEA to pay for the attorneys it needs.

School Board member Daryl Willie said conflict of interest is an issue with the School Board’s attorney in relation to the OGC also representing the City in issues where there may be a conflict. Mr. Teal said

such conflicts are handled by assigning duties to other attorneys so the dedicated School Board attorney is not put in the uncomfortable position of being caught in the middle of a disagreement between the Board and the school system administration. Mr. Willie said that practice should be explained to the School Board so they know how such conflict situations are being handled. He said the School Board has recently hired outside counsel to do an investigation of a recent issue at Douglas Anderson School of the Arts and some have questioned why the OGC couldn't perform that function. Mr. Teal said they've done it both ways on different issues. He said you wouldn't want to have a conflict if the investigation leads to legal action that OGC would be involved in. The need for specialization also plays into whether OGC could do it or not (i.e. educational regulatory compliance).

School Board Member Warren Jones said there is a perennial problem with the perception of who the General Counsel works for, with many feeling they ultimately answer to the Mayor above all. He thinks a selection mechanism with all the independent agencies represented in the process would make everyone feel more comfortable that everyone is being properly represented. He referenced the disagreement several years ago about whether the School Board could hire independent counsel to represent its interests in the conflict about whether the City Council had to put the School Board's local option school sales tax referendum on the ballot for voters to decide.

Chairwoman Priestly Jackson said all of the other 66 school districts can hire their own attorney, unlike Jacksonville with its charter which mandates the use of OGC. Warren Jones said the School Board existed before consolidation took effect and has very specialized needs due to state law. Ms. Priestly Jackson said only the City Council has the authority under the Charter to hire its own attorney and when she was on the School Board she was of the opinion that the board could hire its own attorney because it pre-existed consolidation. Jason Teal said the matter is not legally settled. What did the Legislature intend when it adopted Section 7.01 of the Charter regarding the powers of the General Counsel – did that supersede the School Board's previous authority? The Charter, which is a state law, says the OGC shall provide all legal services. There was a legal challenge during the sales tax referendum controversy and a group of private attorneys worked pro bono on behalf of the school district to argue that point. The circuit court judge sided with the School Board regarding their ability to hire outside counsel but the matter was never settled because the judge's ruling was not appealed by the City. CM DeFoor asked about other consolidated governments and what is known about their county attorney structure. Mr. Teal said only Miami-Dade County is in any way comparable in the state of Florida to Jacksonville, and their consolidation is not the same form. Other states' school systems may be set up differently than Florida's. He said any clarification will have to come from an amendment to the City Charter via action by the state legislature. He believes the school sales tax controversy was a one-time issue and it may not be worth the effort to pursue a remedy if it is unlikely to arise again. CM Boylan said he thinks clarity would be good because a similar issue will likely arise in the future. Warren Jones said other local county commissions (Clay and St. Johns) put their school sales tax referenda on the ballot as a ministerial function with no question of their having authority to keep it off the ballot.

Chairwoman Priestly Jackson recounted her experience with being told she could not impact the JEA Invitation to Negotiate (ITN) process via legislation after the City Council was told by a previous General Counsel that the Council could intervene in the case of the School Board sales tax issue. She had a serious problem with what seemed like contradictory advice depending on the circumstance. Mr. Teal said that, although he wasn't involved at the time, the issue with the Council's potential involvement with the ITN was a matter of timing. Since the ITN was already on the street, the Council was limited by procurement laws as to its role because it would be voting on the recommendation resulting from the ITN at the end of the process. He said that since the JEA is a wholly owned subsidiary of the City, the Council has a role to play in major issues at JEA, especially as the Charter was amended after the JEA controversy. CM DeFoor said the JEA controversy highlighted how important having a great General Counsel is to the consolidated government. Mr. Teal said he will always advise his client about the ramifications of their

decision and if the client insists on a course of action he does not recommend, he would offer to have outside counsel look at the issue and offer another opinion. Ultimately, he would issue a binding legal opinion if necessary to protect the best interests of the consolidated government which is his ultimate responsibility. CM DeFoor asked if that process could be codified. Mr. Teal said a general policy would be very difficult because there are always nuances and complexities that can't be anticipated. City Council can request a binding legal opinion that could be a basis for a challenge in court. CM DeFoor said that doesn't solve the problem because Council couldn't challenge the binding opinion in court if the OGC wouldn't authorize legal action.

Council President Freeman asked if the process for all the authorities to have a voice in selection of the General Counsel would be a subject for the Workshop's final report. Chairwoman Priestly Jackson said it would via a recommendation for a Charter amendment. Mr. Teal said the current General Counsel recommendation committee structure came out of the last Charter Revision Commission. The Recommendation Committee meets and makes a recommendation to the Mayor who nominates a candidate for the Council to confirm. Mr. Jones said the system used to be a simple mayoral appointment and the selection committee process was adopted in the aftermath of a former General Counsel being criminally indicted. Mr. Teal said he would supply the group with the Charter Revision Commission's discussion and recommendation regarding selection of the General Counsel.

Jay Stowe said he is a big fan of consolidation but disagrees with Mr. Teal's previous assertion that the General Counsel's role is to defend the interests of the consolidated government. He believes it should be to protect the best interests of the citizens. He said the "people problems" with an individual General Counsel should be addressed directly with that person at the time and not by amending the City Charter.

Chairwoman Priestly Jackson said there will be one more workshop on May 5<sup>th</sup> with the Council Auditor as a presenter and also to consider any last input from anyone who hasn't appeared yet. She welcomes input from the authorities, School Board and others represented by OGC about what they would like to see done.

#### Public Comment

Carnell Oliver said there needs to be clarification from the state about agencies hiring outside counsel. He thinks the General Counsel should be an elected office and should not be located in City Hall. The OGC needs to grow as the city and its legal needs grow. The Ethics Office and Inspector General should be housed in the OGC.

John Nooney asked if the OGC could represent a citizen in a dispute with a City Council member who refuses to represent their interests. OGC needs to restore the public's right to participate in the legislative process by making comments in City Council committee meetings, which was removed by a prior General Counsel.

With no further business, the Chairwoman adjourned the meeting.

**Meeting adjourned:** 10:35 a.m.

Minutes: Jeff Clements, Council Research Division

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