

June 20, 2011

Rogers Waterworks and Sewer Commission

Minutes

The Rogers Waterworks and Sewer Commission held its regularly scheduled monthly meeting at 4:00 Pm, Monday, June 20, 2011, in the Rogers Water Utilities Administration Building, 601 S. Second Street. Commissioners Travis Greene, Jene` Huffman-Gilreath and Guy Cable were present. Don Kendall and Roger Surly were absent. Rogers Water utilities (RWU) staff in attendance were Tom McAlister, Mark Johnson, Joyce Johnson, William Evans, Robert Moore, Johnny Lunsford, and Earl Rausch. Others at the meeting were Alan Wooten, Robert Frazier, City Attorney Ben Lipscomb, Jim Clark, and Mayor Greg Hines. Chairman Greene called the meeting to order at 4:00 PM.

There was no action taken on the May 2011 minutes.

Greene recognized Joyce Johnson, RWU Controller. Johnson presented the Commission with copies of the May financial reports. She noted that sales were off from the previous May, mainly due to the wet weather. She noted a loss of \$71,000 for the Water Department; however, the Water Department was still showing a profit for the year, the first time in three years. She said this was due to the hot, dry summer of 2010, and an increase in the amount of impact and access fees collected. Sewer consumption was down as well, but the Sewer Department income was well ahead of budget for FY'11, she said.

Greene recognized Mark Johnson, Utilities Engineer. Johnson presented the Commission with a short report on the several capital projects in which the Commission had a financial interest. Johnson said that sludge drier project was waiting for equipment submittals. He said that the contractor on the old administration building (Danny Robinson) was on track to complete construction by August 1. He said the sewer rehab contractor, Insituform, Inc., was working mainly at night, since most of their inspections were in heavily traveled streets (Poplar, Arkansas, and S. 8th Street) in town.

Cable asked if the sewer rehab contractor was going to finish on time and in budget. Johnson said that the contractor indicated that the project would be completed next month (July 2011) and had not asked for any additional money.

Greene recognized Alan Wooten, attorney for the Commission. Wooten said that the illegal exaction lawsuit had been settled, since the attorney for the plaintiff dropped the request to find the Commission, the City Council, and the City of Rogers "in contempt of court". Also, he said that the plaintiff's attorney had advised him that he would not seek additional attorney's fees.

Continuing, Wooten said that his law firm, Warner, Smith, and Harris, was dissolving after 124 years. He said that he was joining a Fayetteville, law firm, but that Robert Frazier, who had been handling the Commission's legal work for the last few years, could serve until a suitable replacement was found. He said that he had enjoyed working for the Commission and the Utilities.

Wooten advised the Commission to hire its own attorney to assure good quality service. He said that there may be times when the Commission's and the City's legal interest differ, and they could use independent counsel.

Mayor Hines took exception to the last remark made by Wooten. He said that the interests of the Commission and the City of Rogers should be aligned exactly. He said the Commission had a fiduciary responsibility to the rate-payers to save money where possible. The Mayor said that the City desired to hire another, entry level attorney to help present legal staff. He said that the City Attorney's office would represent the Commission in return for the cost of the new attorney's salary. He said the City would pay for his or her benefits, and house them in the Rogers City Hall. The Commission would save money over hiring another private attorney, the Mayor said.

Ben Lipscomb, Rogers City Attorney, said that he had acted as the Commission's legal representative for fifteen years until 2005, when "creative differences" necessitated the need for the Commission to hire outside legal representation. Lipscomb said that his office would provide legal representation for the Utilities and the Commission, for around \$55,000 per year. He said that he had "no problem" with the Commission seeking outside counsel for specialized legal matters.

How much are we paying now?" Someone asked. Tom McAlister, RWU Manager, said that the Commission paid Warner, Smith and Harris \$1500 per month or \$18,000 per year for a retainer. Any service beyond answering legal questions and coming to the monthly Commission meetings, were charged at the usual, customary hourly rate. Because the Commission had to defend itself in the Illegal exaction lawsuit brought by the NWA Homebuilders Association and Bill Burkhart, the fees had been much more than the retainage, he said.

How much did the Commission pay last year? Mayor Hines asked. Joyce Johnson said WSH had been paid about \$33,000 for FY '11. Hines reiterated that the Rogers City Council wants the Commission to use the City Attorney's office for legal services.

Cable asked if the Manager was satisfied with the service rendered by the City Attorney. McAlister answered in the affirmative.

What were the Commission's options? Huffman-Gilreath asked. McAlister said that, if the Commission opted NOT to use the Rogers City Attorney's office for legal representation, then the Commission must go through a formal selection process, including advertising for Statements of Qualification, reviewing the SOQ's, picking the most qualified firm, and then negotiating fees. Huffman-Gilreath said she was in favor of "seeing what was available out there", and possibly save money.

There was a motion by Greene, second by Cable, to use the City Attorney for legal services. Greene and Cable voted, "Aye". Huffman- Gilreath voted, "Nay". The motion carried.

McAlister presented the Commission with an up-to-date water/sewer rate comparison of four distinct user classes. He noted that the Rogers water rates were the lowest in Northwest Arkansas.

The meeting adjourned at 4:28 PM.

Respectfully submitted,

A handwritten signature in blue ink that reads "Tom S. McAlister". The signature is written in a cursive, flowing style.

Tom S. McAlister, Acting Secretary
Rogers Waterworks and Sewer Commission

File: RWWSC minutes, 6-20-11