

Rogers Waterworks and Sewer Commission

October 6, 2014

Minutes

The Rogers Waterworks and Sewer Commission held a special meeting at 4:00 PM on Monday, October 6, 2014, in the Rogers Water Utilities Administration Building. Present were Commissioners Don Kendall, Kathy McClure, Jene' Huffman-Gilreath, Roger Surly, and Travis Greene. Rogers Water Utilities staff in attendance were Joyce Johnson, Johnny Lunsford, William Evans, Robert Moore, Vera Hall, Randy Watson, Jennifer Lattin, Terry McCauley, Brian Sartain, Stephen Ponder, and Earl Rausch. Others in attendance were City Planner Derrel Smith and John Gore of the Morning News. City Attorney Ben Lipscomb did not attend.

Chairman Kendall announced that this meeting was concerning Rogers City Ordinances 14-46 and 14-47 dated September 23, 2014. Ordinance 14-46 established a staff attorney for the City of Rogers. If you read the Ordinance 14-46 and the attachments, the staff attorney's responsibilities include acting as legal advisor to all City officials, boards, commissions, departments and agencies. Ordinance 14-47 specifically says in the body that the city attorney shall act as legal advisor to the Rogers Water Utilities and the Rogers Water Commission. Chairman Kendall stated after reading these ordinances, it appears there are ambiguities within the ordinances. It is more specific in Ordinance 14-47 that the city attorney will act as our legal advisor but it also incorporated that the staff attorney would act as legal advisor to boards and commissions. Chairman Kendall stated he contacted the Arkansas Municipal League attorney, Mark Hayes, and his staff. Haynes felt the ordinances may need clarification. With the assistance of the Municipal League, the RWU and city staff researched the authority of the Commission to independently hire attorneys. The staff located the original Ordinance 281 dated 1945 which implemented the Water Commission. Ordinance 281 has very broad language stating the "Commissioners shall have full and complete authority to manage, operate, improve and etc. of the municipally owned water system and complete charge thereof". In Ordinance 86-10 dated February 11, 1986, which combines the Water Commission and the Sewer Commission into one five member Commission the same authority is given as before. The Municipal League attorney was given these ordinances for review. In the Municipal League attorney's opinion, the Commission can make decisions such as hiring professionals and should be running the Utility independently. For a historical timeline, we went back and found Water and Sewer Commission minutes. In 2006, we found the Water and Sewer Commission minutes that stated the City Attorney had resigned from representing the Rogers Water Utilities. In August 9, 2011 minutes it was noted that City Attorney Ben Lipscomb said the City Attorney was once again the legal representative of the Rogers Water Utilities. In 2011, the meeting minutes also reflected that Rogers Water had agreed to provide \$55,000 for a

third attorney in the City Attorney's Office with the City providing the benefits package. That is when Chris Griffin was hired.

It appears to me after examining these documents that we started using the City Attorney's Office with three attorneys and agreed to provide \$55,000 stated Chairman Kendall. At that time, we had three attorneys to work with us (Jim Clark, Chris Griffin and Ben Lipscomb). So as I understand it, the City Attorney's Office has been changed with duties being split up. Chris Griffin has left the City Attorney's Office to be the staff attorney. Chairman Kendall stated the major issue is whether we will continue to use the City Attorney or choose other legal counsel. Chairman Kendall stated there are three issues. One: City Attorney's Office continuing as legal counsel. Two: City Attorney's Office no longer represent us, we will stop contributing \$50,000 to the City Attorney Office. Three: we need to have the City Council to accept our resolution or whatever the City Council deems appropriate. Commissioner Greene asked if there was a commitment to the City Attorney Office. Chairmen Kendall stated there is no commitment. Commissioner McClure asked about acquiring the service of an attorney. Chairman Kendall stated there is a formal process to go through and in the mean time; the Municipal League will provide legal counsel.

Commissioner Huffman-Gilreath made motion in three parts. Part 1. The Rogers Waterworks and Sewer Commission directs the Rogers Water Utilities to discontinue utilization of the City Attorney's Office for legal counsel and services. Part 2. The Rogers Waterworks and Sewer Commission directs the Rogers Water Utilities to cease payment for legal services from the City Attorney's Office. Part 3. The Rogers Waterworks and Sewer Commission recommends the Rogers City Council support the Rogers Waterworks and Sewer Commission and the Rogers Water Utilities in seeking legal counsel and services. There was a second by Commissioner Surly. All in favor, motion carried and Commissioner McClure did not vote. Chairman Kendall asked Commissioner Huffman-Gilreath was this motion in the form of a resolution. Commissioner Huffman-Gilreath stated that the motion was in the form of a resolution.

Chairman Kendall adjourned the meeting at 4:22 PM.

Respectfully submitted,



Earl Rausch, Acting Secretary
Rogers Waterworks and Sewer Commission
File: RWWSC minutes, 10-6-14