

MINUTES
SPECIAL CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS
CITY OF TROUTDALE
104 SE KIBLING STREET
TROUTDALE, OR 97060

10:30 A.M. -- AUGUST 16, 1986

Mayor Cox called the City Council meeting to order at 10:40 a.m.

PRESENT: Gene Bui, Ron Burgin, Sharlyn Jacobs, Marge Schmunk, Sam Cox

ABSENT: Marty Gault, Paul Thalsofer

STAFF: Pamela L. Christian, City Administrator
City Attorney: Jim Jennings (11:00 A.M.)
Valerie J. Raglione, City Recorder

PRESS: Quenton Smith, Oregonian

ITEM: Regarding the September 16, 1986 Levy Election

At 10:40 a.m. Christian began the discussion stating that the City Attorney was on his way, background information was given.

Christian stated that discussion at the two budget meetings in July 1, and July 8, 1986 was the failure of the June levy and the next steps needed to be taken. The Budget Committee made the recommendation to go out for a lesser amount \$88,289; at the July 1, 1986 meeting. At the July 8, 1986 meeting just prior to the City Council Regular Meeting, the Budget Committee recommendation was that they did not want any further cuts made and should it fail, we could submit it again. Hearings were held for the \$88,289 amount. It was played through and filed in that same way.

Christian then stated that according to the law, Jennings found it, it is not in the Election Manual by which we were going on Friday, regarding filing, along with a Resolution of Council. The Resolution calling for an election must be passed by Council, there is no requirement by the County Election Office so it did not get caught at that point. It is in the statutes, however not under Budget Statutes, the statutes under Elections. It is in separate portions of the statutes not together.

Christian stated that the Council was then polled, "Are you still in agreement with what the decision was in July"? (Exhibit A attached.) All contacted said 'yes', except Burgin stated

(through a message passed on by his wife) he wanted to go with a lesser amount.

Burgin stated he had said 'yes'.

Christian stated that the filing was then made by deadline (5:00 p.m. 8/13/86), which was the day after the election. The same day we filed, we put out public notices, sent them to the press for publication and thought that our bases had been covered. Obviously, we hadn't. The Oregonian pointed that out. The City Attorney was contacted to ask what our alternatives were now, given the fact that I screwed up as far as not having the Resolution passed prior to filing for the second election of the same amount. Jim said, 'yes', we screwed up. He wasn't sure, as of yesterday morning, as to the alternatives to this issue. According to Multnomah County, there is no problem in not sending out the ballot if the Council does it, however, the State Elections Department does. They say we have to go through with it regardless, once it has been filed.

Christian discussed the ability to withdraw from the election if you were a candidate, however, this does not hold true for a measure. Tax Supervising had also been contacted and agreed to waive the public hearing on the budget that is required, simply because it was the same budget. You have 55 days in advance, we had already had a hearing on the same budget before Tax Supervising, as well as public hearings on the budget at City Council, as well as the Budget Committee's hearing on that budget. We thought that we had covered all of the public hearing requirements, obviously we haven't. Jennings said that as far as the statutes are, there isn't a lot we can do. You have two choices: 1) let it go through; then it can be challenged by the 'injured party' (somebody from within the City of Troutdale could file against it to invalidate the election). The chances aren't that great for that to happen. 2) The other option is a possibility of getting a court order to remove it from the ballot.

Cox asked what that would entail. Jennings had not yet arrived. He will bring that information, if he is able to obtain it when he arrives.

Christian stated that when she spoke with Jennings last evening, he was researching that information, what criteria, et cetera.

Cox stated that he would prefer to withdraw the measure, if it is possible to do so at this time. He felt that the article in the Oregonian, we were within 74 votes of passage, he felt the City would have won with a little more information to the public; however, he felt that the information had been made available to the public. If 3 or 4 times that had voted against it, he would have said 'no', wait until November and

Christian, there is no process to do that.

Jennings, I looked until fairly late last night and could find nothing in the statutes about withdrawing an issue from a ballot. You can withdraw certain candidates, but nothing that specifically states you can take an issue off a ballot. What comes to my mind, is that when all else fails, court of equity, the side of the courts which are in the more flexible side, can act to do whatever is necessary to promote justice. I'm not sure that one of two things could not be done. Either we can approach the court and ask for an injunction to issue prohibiting the election and/or ask the court to issue an alternative writ of mandamus against the County Elections Officer, asking him to withdraw the ballot title. I'm not sure yet whether either of those can be done. But, I think that it is something that we should continue to explore within the next several days, to see if that is an option that is available. I don't want the City to be in a position where it has to defend itself for something which everyone acknowledges is an unintentional error. It is an unnecessary legal expense and also, in my opinion, would damage the credibility of the City...especially, in front of the voters in another election. I would rather see something done now, if at all possible to take it off of the ballot, speaking legally, than to have to defend it after the fact. The mere fact that we have acknowledged a violation of the Public Meetings Law does not take us off the hook in that regard as long as far as I am concerned as long as that ballot...

Christian stated that the point is that there is NO process, from the State Elections Department, and from Multnomah County. They both said if the legislature would get off their backs and look at this process we wouldn't have these problems, it is absolutely and totally unclear as to how to take a measure off the ballot. She also asked if, since we have to certify the results of the election by Resolution; and we also have to pass a Resolution to levy that tax...what happens legally if there is enough liability associated with that, if we just don't levy the tax?

Jennings stated that this would be the last alternative, if there are no other avenues available. If the election is held, and passes, it would be a void election. I feel that the City cannot certify the election in good conscience. We would then be creating an act which could be attacked.

Burgin asked if it could be attacked legally anytime up to the election by an affected party, or anytime afterwards?

Jennings: Yes. And frankly, an affected party at this point might file suit, saying you either violated the Election Laws, or you have violated the Public Meetings Law and ask the Court for an Injunction to Prohibit the Election. That is a

go for a tax base. He stated he felt there had been so much damage done that he didn't think it could be sold at this time. He stated his preference was to withdraw it. He didn't know exactly what information the City Attorney has obtained regarding the Court Order.

Christian clarified that there is a chance of having it challenged should the election pass. However, the law also protects the public interest, at every step. There are two other actions that Council must take even if the election is successful. 1) Accept the Election Results by Resolution; 2) pass a Resolution levying the tax.

Schmunk: so there are more steps to go before the money is in our hands.

Christian: Should the election be favorable, and we go through the public hearing process again on levying the tax -- the Council also has the choice of not levying the tax at that time. She stated that her opinion was, if Council honestly believed in the levy, let it go ahead, that was why it was done in the first place. If it is challenged, then it is challenged. You have two other chances to not accept it. Precedence has already been set. The City Attorney is researching that also. City of Gresham had an election a couple of years ago, it didn't matter how it came out because something happened between the time they filed and the actual election.

Cox stated that he knew we needed the money.

Christian felt that the risks were low enough and the guarantees are there anyway that if it were challenged, Council doesn't have to levy it, even if it were successful.

Bui: Felt that this was a way out with the two other steps. He was interested in the City Attorney's opinion.

Jennings arrived (10:53 a.m.)

Cox stated that \$1,019.42 had already been spent twice and this would be in addition to that. He felt it jeopardized the passage of it. Cox felt that with only a 74 spread, it would have passed prior to this issue.

Jennings stated that you can only go 4 elections in one year. If this goes through, you are using up one of the chances.

Christian stated this would be the third one.

Jennings briefed the legal aspects. The deadline for having this election on the ballot was Wednesday past. A phone poll was taken and the decision was made to take the same ballot for the same amount and put it on the September 16 ballot.

Christian stated that the poll was just to re-affirm the amount, not to raise it.

Jennings then stated that the bottom line, however, is there was no Resolution nor Ordinance passed at any Council meeting specifically authorizing submission of this ballot in the September timeframe. That is the critical issue. The statutes relating to Serial Levys state that..you can only pass a Serial levy upon motion, and or Ordinance of the City Council. This is a levy outside of the tax base limitation. That being the case, you have to have this Ordinance or Resolution passed prior to the time that your Elections Official, Val, certifies to the County Elections Official that you want this on the ballot. You can't go back and do it after the fact. You have to have that done prior to the time of the filing deadline. That is the single most critical issue.

That being the case, this election, because it was not called by Resolution prior to the 5:00 p.m. deadline Wednesday past, is subject to attack just for that reason. Violation of the Election Law. Not only that, but the Oregon Public Meetings Law states that ...any Resolution or Ordinance, or decision must be made in a public meeting, failure to do so can result in the decision being attacked and overturned by an interested party (an interested party is either one who is affected by the decision, or a member of the news media. Since it is clear that there was no intent by anyone to violate Oregon Public Meetings Law, there is no liability that I can see that would attach to any action that has taken place, other than potentially this issue veing overturned.

What to do about the situation at this time. The danger of having any suit brought under the Public Meetings Law is that if the party bringing the suit is successful, the municipality or offending governmental agency can be held liable for attorneys fees. That is an aside, and I'll tell you where that is important.

As it stands right now, we have a ballot that is void or voidable. The difference being that a court has to say that it is void; void without anybody saying that it is void. I'm not sure which it is it doesn't make a heck of a lot of difference in this situation. Since it is void, the results of the election would have no force or affect, if they were challenged. I think that being the case, it is incumbent on the City at this time to take whatever steps are necessary to get the ballot either the measure off of the ballot, or stop the election entirely.

My understanding, second hand, is that currently the County either doesn't know how that would be done, or isn't willing...

possibility. I don't want to encourage that because the City could incur some liability in that case. That is a possibility and that might be one of the ways an election could be prohibited. I don't think that there is any doubt that a Court can't order the election not take place and that the ballot withdrawn and/or not mailed. The question is Can the City. Does the City have standing to do that itself? Under what mechanism file a law suit saying, We have made a mistake, we want to rectify that. Who does the City bring the suit against?

Burgin stated that he would rather the City figure how to do it than have the Oregonian or somebody else's attorney do that. First is because we would control our costs.

Jennings, Not the least of which, we are in the driver's seat and the other is a political reason.

Burgin, I would rather do that.

Jennings stated that as of 11:00 p.m. last night, he was not aware of a mechanism to do so. He apologized for being late this morning, he thought that the meeting was at 11:30 a.m., not 10:30 a.m. As of now, he saw a few rays of hope, but would take a couple of days for him to figure out how to do it.

Burgin asked if there was a way of passing a Resolution today, stating that we will refuse to certify an election?

Jennings, yes. He thought a Resolution should be passed acknowledging there are procedural defects in the calling of this election and announcing the City's intention not to abide by any positive results.

Cox felt that the credibility had already been lost with the article that is in the paper. He would rather it not show up at all. He felt that being within 74 votes of the passage was important and urgent. Since it had been discussed at a meeting, he would rather withdraw it.

Schmunk stated that this would be a crazy world if we didn't make mistakes. She said we all make mistakes, things happen that's just one of those things. We aren't trying to dupe the people, we are sincere in what we are doing.

Cox stated that he felt the 'sell' job would be so much greater, we can't use City funds, you know how expensive it is. He stated he would rather wait until November.

Forfeiture of cost(s) for election. Jennings stated that in statutes or case law, there is nothing...including across the United States about withdrawing a levy from the people. None. So, we don't know about the procedure for doing or the consequences for doing it.

Jennings stated that in order to ask the judge to do something, we have to file some sort of 'lawsuit' to give him jurisdiction, the biggest problem is finding out a way to file a lawsuit. I am confident that a judge will issue an injunction against the election if, we find the right vehicle to do so. He didn't feel that anyone would oppose it, but didn't know what the vehicle is to do it right now.

Burgin asked if two Resolutions were passed today, 1) recognize the defects in our process and in advance refuse to certify any results of the elections and; 2) directing City Attorney to find a vehicle to take the issue off of the ballot.

Jennings stated that the appropriate Resolution would make mention of the procedural defects that are apparent in the calling of this election and that based on the procedural defects Council believes it to be appropriate to not certify the results, if the measure passes.

The Public Notice had the issue of the September 16, 1986 Tax Levy Election. Is this sufficient notice for the public meeting law? Jennings stated that the Public Meeting Law requires that reasonable notice to give the general public and the news media the time and place of the public meeting along with a list of the subjects to be considered at the meeting. We are considering the levy election, I am not sure how much more explicit it has to be.

Christian stated that it was also in the Outlook of the morning of the meeting.

Jennings felt that this was sufficient notice.

Burgin felt it a better course to recognize the procedural error in advance and try again in November if, Council elects to do so at a future date...public notices, et cetera.

Jennings felt that Christian's note is well taken. There is no decision or direction concerning a November election at this meeting. Discussion of a November election is only related to the impact of the September election happening.

Burgin stated that there is a mail in ballot for the Reynolds School District on the September ballot. Christian stated that it would be on the same ballot, that is her question, it is only the City election that would be affected by the ballot. No one seems to know how that would be affected.

Jennings stated that: do they print new ballots at the expense of the City? Do they strike over the Troutdale issue? Again, this is on a Court Order at the expense of the City, I just don't have an answer at this time.

Cox asked if he felt anything had been done yet, by the County regarding printing of ballots, since it was only 2 days ago?

Christian stated that they mail the ballots out approximately 2 weeks ahead of the election date, so there would probably not be a lot of time. Jennings felt that notifying the County and notifying them to wait until the last second to print the ballot would be perhaps a cost saving and effort saving measure.

Jennings felt a motion would be appropriate.

MOTION: Burgin moved that to adopt a Resolution stating that there are procedural defects in the 9/16/86 election, and that Council take steps that are necessary to not accept the results of the election, especially if the results are positive in supporting a levy; and that City Attorney take whatever steps are necessary to withdraw the measure from the ballot.

DISCUSSION:

Cox called for discussion. There was no further discussion. He then called for the vote.

YEAS: 4
NAYS: 0
ABSTAINED: 0

Schmunk asked if there was a problem in putting both items in the same Resolution.

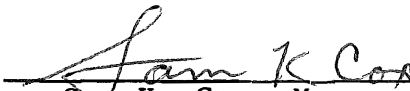
Bui then added to the Resolution that the City Attorney investigate processes necessary to deal with the issue.

Jennings stated that he felt the motion covered this item.

MOTION: Burgin moved to adjourn the meeting. Bui seconded the motion.

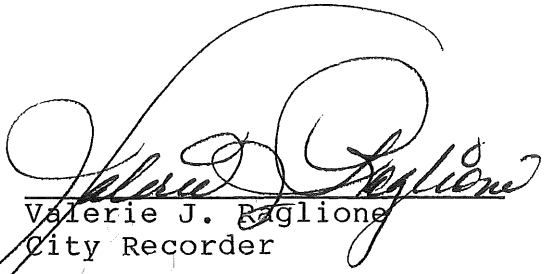
YEAS: 4
NAYS: 0
ABSTAINED: 0

Motion passed. Meeting adjourned at 11:17 a.m., August 16, 1986.



Sam K. Cox, Mayor

ATTEST:



Valerie J. Raglione
City Recorder

22:37

8/18/86 Mon 15:57:19