

MINUTES OF THE MEETING OF THE BOARD OF COMMISSIONERS
PONCA CITY, OKLAHOMA
MARCH 14, 2005

Pursuant to notice as required by law, the Ponca City Board of Commissioners met in special session at 4:00 p.m. in the Commission Room at City Hall, 516 E. Grand, with Mayor Richard Stone presiding:

Present: Richard Stone, Mayor
Stan Kistler, Commissioner
David Cummings, Commissioner
Stan Paynter, Commissioner
Paul Krueger, City Commissioner
Gary Martin, City Manager
Kevin Murphy, City Attorney
Marc LaBossiere, Finance Director/City Clerk

Others Present: Diane Anderson, Commissioner-elect, Rod Bolin, news press

1. Mayor Richard Stone called the meeting to order at 4:00 p.m.
2. Entertain Motion To Enter Executive Session Pursuant To Title 25 Section 307 Oklahoma Statutes For Purposes Of Discussing Pending Litigation.

Commissioner David Cummings began, outlining the purpose of executive sessions in general when relating to pending litigation. Cummings stated that as the litigation involved himself, and no third party, and as such he did not believe an executive session was necessary. Based on Cummings comments, the item proceeded in open session.

Mayor Stone summarized the issue, whether there is a conflict of interest when a City Commissioner is representing a client as they apply for re-zoning, even if the relationship is subsequently severed. Discussion ensued. City Attorney Kevin Murphy went on record with his opinion that if an attorney sits as Commissioner and votes on any issue relating to a client, a conflict of interest exists. Cummings stated a belief that if the relationship had been severed, that no conflict exists. Murphy referenced the State law on similar issues governing State legislators where a one-year waiting period is required, ethics-wise. Murphy re-iterated that in his opinion, based on this statute, the same term holds true for this case.

Stone elaborated that according to the Oklahoma Municipal League, no prohibition exists in State statute, and therefore the City must rely on the opinion of the City Attorney. Murphy qualified that the City Charter does not address the issue, but again referenced the State statute that provides for removal of an elected official from office for conflict of interest.

Cummings brought up a procedural issue, and questioned whether it is appropriate to discuss the items in open session, as the agenda stated an executive session. Murphy responded that everything was in order, and that the intent was to discuss the matter in executive session. Murphy also noted that the notice of meeting and agenda were all properly filed.

Stone re-iterated that the issue has to do with a code of ethics. Murphy further clarified the issue as whether or not Commissioner Cummings can take action, even if relations with the applicant have been severed. Murphy proposed a solution and suggested that the matter be filed in district court, seeking a decision. Murphy explained an alternative is to wait until the vote is held, and then initiate action. Finally, Murphy proposed a third option, to consider and adopt a code of ethics that is more specific, before the zoning issue is considered.

Krueger requested that the Commission hear from Cummings. Cummings expressed regret that the issue is a problem, but stated that he is an attorney and that is what he does for a living, and in a small town this happens. Cummings clarified that when the zoning issue first arose, he assumed the law said he must abstain. Cummings noted that as the item became more problematic, he looked into subject, and disagrees with the City Attorney's opinion on the voting issue. Cummings continued, noting that while he cannot find a case that affirms he can vote on the issue, he also cannot find a case that says he cannot vote. Discussion ensued.

Murphy clarified that he has researched and determined an opinion on this issue as a result of direct order from the City Commission. Krueger relayed a feeling that the law is not always a good rule to dictate behavior, and that he doesn't believe there can be any appearance of impropriety. Paynter agreed with Krueger, stating that you cannot legislate everything that is right or wrong, and many things simply boil down to right and wrong. Discussion continued.

Stone affirmed a belief that the Commission relies on the City Attorney for legal opinions, as that is his role. City Manager Gary Martin detailed having met with the City Attorney and the Mayor to discuss an ethics policy that outlines how the Commission will conduct business, and voiced support of such a policy as it could solve problems in the future. Regarding the Paresko re-zoning, Martin reminded the Commission that the consideration is on zoning only at this point, and that the sewage issue would be an issue at a later date. Discussion ensued.

Stone recessed the meeting at 4:46pm. The meeting was re-convened at 4:54 p.m.

Stone reminded the Commission that they need to stay focused on the zoning issue, and that he would like to wait until the next work session to further discuss the matter before bringing the zoning issue back for consideration by the City Commission. In the interim, Stone explained that we will solicit an opinion from the State Attorney General. Murphy clarified that the request would need to come from Senator Myers or Representative Newport. Discussion ensued.

3. Return To Regular Session And Take Any Necessary Action, If Appropriate, On Items Discussed In Executive Session.

City Attorney Kevin Murphy requested a motion to direct the City Attorney to draft a question on the issue to be forwarded to our State delegation, which would go to the Attorney General for an opinion. Paynter moved to direct the City Attorney to draft a question on the issue to be forwarded to our State delegation, which would go to the Attorney General for an opinion, which was seconded by Cummings. Yeas: 5. Nays: 0. Motion passed.

4. Mayor Stone adjourned the meeting at 5:03 p.m.

PASSED IN SESSION AND APPROVED THIS 11TH DAY OF APRIL 2005.

MAYOR

ATTEST

CITY CLERK

