

MINUTES OF THE MANAGEMENT COMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT

February 26, 1987

Committee Members Present: Tom DeJardin (alternate), Jim Gardner,
Gary Hansen, Sharron Kelley and David
Knowles (alternate)

Committee Members Absent: Tanya Collier and Larry Cooper

Staff Present: Donald Carlson, Jennifer Sims, Judy
Munro, Chuck Stoudt and Ray Barker

Chairman Gardner called the meeting to order at 3:00 p.m.

1. Consideration of Order No. 87-13, for the Purpose of
Authorizing the Executive Officer to Enter into a Lease
Agreement with Turner Construction Company for Space at
2000 S.W. First Avenue, Portland, Oregon

Judy Munro, Support Services Supervisor, reviewed staff's report. She explained the proposed agreement would sublease space at the Metro Center to Turner Construction Company, construction managers for the Oregon Convention Center, at the initial rate of \$9.30 per square foot. After June 30, if Metro's tax exemption status would end the space would be subleased at \$11.30 per square foot.

In response to Chairman Gardner's question, Ms. Munro said parking space had been included in the agreement in order for Metro to remain competitive in a slow real estate market. Chairman Gardner expressed reservations that income from parking should be included in the income/expense analysis, given the parking spaces could easily be rented to others independent of the sublease.

A discussion followed about Metro's tax exempt status, how it was determined by the Multnomah County Assessor's Office, and whether Turner Construction, a for-profit business, should pay a temporary, lower sublease rate because of Metro's tax exempt status. Due to Councilor Kelley's concerns, Ms. Munro said she would have the General Counsel amend the sublease agreement to include a provision that should Metro's tax exempt status be eliminated before June 30, 1987, Turner Construction Company would have to pay a higher square footage rate. Councilor Kelley also requested staff secure a statement from the Multnomah County Assessor on the tax exemption status of the Metro Center.

Motion: Councilor DeJardin moved Order No. 87-13 be adopted and Councilor Kelley seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors DeJardin, Gardner, Hansen and Kelley

Absent: Councilors Collier, Cooper and Knowles

The motion carried and Order No. 87-13 was adopted.

2. WORK SESSION: Review of the Executive Officer's Current and Planned Transition Staffing, Programs and Budget

Chairman Gardner explained the purpose of the work session was to complete the process of reviewing information submitted by the Executive Officer concerning transition issues, and for the Committee to reach a consensus about the findings it would report back to the full Council. He then distributed a document entitled "Issues for Management Committee Report on Transition" which listed the following areas of concern: 1) budget impact; 2) personnel practices; 3) personal services contracts; and 4) other issues.

Chuck Stoudt, Executive Assistant to the Executive Officer, made available to the Committee copies of Code Section 2.02.035 of the Personnel Rules regarding procedures for legal opinions concerning the Rules.

Councilor Kelley asked if the Committee would be making a recommendation on whether the Deputy Executive Officer position should be declared exempt from the Personnel Rules. Chairman Gardner said the Council had not asked the Committee to address that issue.

Councilor DeJardin thought it wise to consider the effects of transition practices and recommended changes on the long-term stability of the Metro organization.

It was generally agreed the Committee's report to the Council would consist of factual findings and that the Council would then recommend specific courses of action to resolve problems, if necessary.

The Committee started a discussion about personnel issues and whether the Metro Personnel Rules had been followed. However, Chairman Gardner requested the Committee conduct its discussion in the order of issues outlined on his "Issues for Management Committee Report on Transition" document.

Budget Impact

Jennifer Sims, Director of Management Services, distributed budget information previously requested by the Committee. She first explained the Council appropriated money in the budget by department and by major category (personal services, materials and services, and capital). Ms. Sims then reviewed costs related to resignations of employees as a result of the transition of Executive Officer, and

additional salary costs for new transition employees. She explained there were adequate funds in all affected budgets to cover those costs as well as the costs of contracted employees.

When questioned by the Committee, Ms. Sims said she did not have enough information at that time to know which budgeted programs or positions had been changed as a result of transition expenses. Donald Carlson confirmed that expenses related to recent personnel actions and contract activity related to transition were within the budget limits established by the Council prior to Executive Officer Cusma's assuming office. The Committee was concerned whether the Council-adopted budget priorities were being carried out. It was acknowledged it was the Council's responsibility when granting budget adjustments and the impact of transfers on previously budgeted programs and line items.

Ms. Sims reported usual and customary recruitment expenses were a budgeted expense of the Personnel Office. Extra costs associated with extensive recruiting searches for key positions were charged back to departments. She said no funds had been budgeted in any of the department budgets for such extra costs.

Councilor Hansen asked if any liability would exist by allowing an employee budgeted under one department to perform work unrelated to that department. Ms. Sims said that practice would be in violation of the Council's policy and of accepted accounting standards. Such a practice would most likely cause a negative audit comment and attention by the Tax Supervising and Conservation Commission (TSCC), she said.

Chairman Gardner noted a current example of that practice could exist with employee Yvonne Sherlock, originally budgeted as a Solid Waste employee who had been assisting Mr. Phelps on some matters unrelated to the Solid Waste Department.

Chairman Gardner asked staff to find out to which budget legal opinions other than ones rendered by Eleanore Baxendale, Metro's General Counsel, and the one opinion specifically requested of Jonathan Harnish by the Council, were being charged. Mr. Carlson said he would provide that information. Chairman Gardner expressed concern that one of Mr. Harnish's opinions had been addressed to John Leahy who was not a Metro employee. He said costs for any such opinions should not come out of the Council's budget.

Councilor Kelley requested staff provide a report of specific transition costs as of March 1, 1987, which would include costs associated with all issues identified in Chairman Gardner's list plus recruiting costs, the cost of outside legal opinions, and other costs identified by Ray Barker.

Personnel Practices

The Committee discussed the status of key transition employees, whether they should be confirmed and whether they should be classified as temporary or provisional employees. It was generally agreed the Committee would follow the General Counsel's opinion on the matter. That opinion was dated February 17, 1987, and was transmitted from Eleanore Baxendale to the Management Committee in the form of a memo to Randy Boose, Metro Personnel Officer. The memo was regarding "Council Confirmation of Positions."

Chairman Gardner explained Ms. Baxendale, General Counsel, had determined all department heads, whether provisional or permanent, should be confirmed because it was a condition of the position itself. He also noted Ms. Baxendale's opinion had clearly defined the terms "temporary employee" and "provisional employee." A temporary employee was defined as a person hired to perform special tasks not performed by other staff. A temporary employee could be hired for a period of up to six months. Another six-month extension could be granted by the Executive Officer. A temporary employee could serve no longer than 12 months.

A provisional employee was defined as a person hired to fill a vacancy created by a permanent, budgeted staff person. A provisional employee, under the current Personnel Rules, could serve no longer than 90 days. An extension to the 90-day provisional appointment could be granted by the Council. The provisional employee could not compete as an in-house employee for filling the vacant position. Job recruitment efforts should be taking place to fill the permanent, vacant position while the provisional employees served his/her term.

It was agreed the General Counsel should issue an opinion to determine whether the current transition employees (Dick Enstrom, Marc Madden, Tor Lyshaug, Judith Mandt, Bob Applegate and Ray Phelps) were temporary or provisional employees. It was agreed all persons filling positions requiring confirmation should be confirmed, whether they be deemed temporary or provisional employees by the General Counsel. Concern was raised about whether Metro would be protected from liability by allowing key employees to serve without Counsel confirmation.

Councilor Kelley thought the Personnel Rules should be amended to clearly define the term "temporary employee." Chairman Gardner said Ms. Baxendale's opinion, dated February 17, 1987, pointed out that a clear definition existed in the Metro Code.

Chairman Gardner said he would conclude that Dick Enstrom, Tor Lyshaug, and Marc Madden needed to be confirmed by the Council. He

also concluded the position of Government Relations Manager, formerly filled by Phillip Fell, was currently vacant. Donald Carlson explained part of the salary paid to Kim Duncan was coming from the Government Relations Manager budget line item and that Ms. Duncan had already been confirmed by the Council. Therefore, he did not consider the Government Relations position vacant.

Chairman Gardner said he would recommend the Executive Officer report to the Council her plans to recruit permanent employees for the key positions of Solid Waste Director, IRC Administrator, Deputy Executive Officer and Government Relations Manager.

A general discussion followed about problems associated with asking all the agency's key people to resign. Councilor DeJardin and Chairman Gardner agreed with Caroline Miller's assessment that Metro was too small an agency to survive the upheaval caused by appointing all new department heads.

Personal Services Contracts

Chairman Gardner addressed the issue of Metro's \$8,000 contract with Ray Phelps. He said at the last Committee meeting it was learned that Metro's contract rules were not followed: the contract had been signed before an internal review had taken place and no attempt had been made to solicit at least three competitive proposals for the contract. He said because of those deficiencies, the finance officer had not approved the contract for payment and Mr. Phelps, the contractor, had not been paid.

Councilor DeJardin questioned why a "no confidence" complaint had not been filed against the person signing the contract.

Chairman Gardner explained Mr. Phelps had been contracted to determine whether Metro should undergo a performance auditing process and he questioned whether Mr. Phelps had actually performed the work described in the contract terms.

Councilor Hansen did not think it relevant whether Mr. Phelps had completed the scope of work. He said the contract was not valid because it had not been let according to procedure and as such, Mr. Phelps was a volunteer, not a contractor.

Donald Carlson explained Ms. Baxendale had issued a written opinion stating the contract sum must be paid to Mr. Phelps unless it could be demonstrated he had not performed the work described in the contract terms. That opinion was rendered based on the fact Mr. Phelps had entered into the agreement with the Executive Officer in good faith.

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Councilor DeJardin said the Council had a justifiable claim against the Executive Officer and she should be judged in the same manner she judged her staff on contracting matters. Councilor Hansen agreed that legally Metro might have no recourse but to pay Mr. Phelps. He was concerned about the Executive's management practices. Councilor Kelley suggested the \$8,000 payable to Mr. Phelps be charged to the Executive Management budget.

Chairman Gardner concluded the Council should ask the Executive Officer to explain her plans to retain Mr. Phelps, the status of his future employment and the specific work he would be performing for the District.

The meeting was adjourned at 5:30 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

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