

May 21, 2019

Members present: Mr. Schaber, Mr. Landon Mr. Norris.

With a quorum present, Mr. Schaber called the meeting to order at 6:35 PM.

New Business:

Item 1. ORDINANCE DIRECTING THE CITY AUDITOR AND CITY LAW DIRECTOR TAKE ALL NECESSARY STEPS TO RECOVER THE BONUS PAYMENT ISSUED IN DECEMBER 2018

Dale Osborn (682 Harding Road) asked how funds would be recovered and if they would be recovered directly from the employee.

Law Director Russell stated that the monies will not be recovered from the employee who received the bonus. There are processes in place for money that is spent without legal authority. The funds are generally recovered from the office holder who caused the money to be spent without legal authority. That would be the judge. This is not an easy thing to do, but they all take oath to uphold laws of Ohio. This includes situations where there is no support that has been shared for the validity of this expenditure. They collectively have an obligation to attempt recovery. If they do not, then they are violating the oath that they undertake. It is likely to be resolved prior to litigation. It is an ongoing discussion item with the court's attorney. A declaratory judgement may be a possibility here.

He continued that the judge's order of last year indicated that the incentive/merit bonus was to be paid from the municipal court assistance fund. In referencing Ohio Revised Code 1901:26:B1 the uses for those funds may be: "rehabilitation of existing facilities, acquisition of equipment, hiring and training of staff, community service programs, mediation or dispute resolution, the employment of magistrates, the training of education of judges, acting judges and magistrates, and other related services." There is no reference to bonuses or compensation of existing employees within the statute that provides for the use of those funds. The judge is correct that council cannot direct her as to what purposes she expends funds. But he believes that they have an obligation to pass this ordinance to recover the public's money.

Mr. Landon asked for clarification if the money was in one fund and then transferred to another fund to pay the bailiff. Law Director Russell stated that the order is dated 11/19 and signed by Judge Ballinger. "It is the order of this court that the bailiff be compensated for incentive merit bonus which shall be paid from the court assistance fund."

Mr. Osborn asked if a transfer could be done to handle this to make it come out of the appropriate fund. Law Director Russell that the judge is enabled by statute to establish what the compensation of the bailiff will be. The auditor will determine how that will be paid – biweekly or semi-monthly. There is no alternative for it to be paid as a one-time bonus. The conclusion is that the manner of the payment was improper as well. The

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court has the capability to adjust the compensation which will be paid semi-monthly or biweekly. Mr. Landon requested a copy of the statute that supports that. Law Director Russell cited Title 7 but indicated that he will email a full copy to council.

Mr. Landon requested that the committee be given time to review the related statutes before they vote on this. Mr. Daniels agreed that this may take some time to reconcile this within themselves, separate from politics. Some may not want to legally prosecute or move forward, but what happens when this happens again. Is this something they want to continue, not only in this department or to set as a precedence for other departments.

Mr. Huddle asked if any other departments can give an incentive bonus. Law Director Russell stated that state law in Ohio does not provide for that. The state legislature would have to pass something that would allow bonuses. They can adjust pay grade and that comes before council. He believes that the Judge has made a pay grade adjustment, but that ordinance has not come before council. Mr. Huddle recalls that "incentive" was included as a legitimate expense. Law Director Russell explained that the court provided a handout where the word was inserted, however it is not in state law.

Law Director Russell said that the precedent in the state of Ohio is to recover funds from the elected official that caused it to wrongfully be paid. It is yet to be determined whether that would be recovered from her personally. The argument is, and the statute supports, that when a compensation payment is made without legal authority that the elected official is responsible. When they inquired with the then state auditor, the response was to leave it with the city's legal advisor for now.

Mr. Daniels stated that there is no desire or precedence to recover from the bailiff. It may not sit well with some to recover from the Judge because she probably felt that she was in the right when she issued it. There may be some that may have some objection to obtaining \$10,000 from the judge personally. He asked about alternatives. Law Director Russell said that they are only asking for the legislative body to reach a conclusion that is outlined in this ordinance. It has meaning. They decide by a vote of the majority that they agree that the money should be recovered. After that, there are many options. He is hopeful that it will be resolved through the upcoming mediation. Mr. Daniels said that if it does not get out of committee, that sends a signal that they are never going to try to recover this money. He would just like to see it not happen again. How do they create a resolution that states their opposition to that without making a collection from the judge herself?

Mr. Schaber said that they must pick a battle and that is the intent of the ordinance. They want to prevent this from happening again, but council must have the courage to bring this forward.

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Mediation is currently scheduled for 06/10. Law Director Russell has had a brief discussion with the Judge's counsel about this topic and he believes that they have agreed to include this as part of the discussion.

Mr. Osborn asked why this was not researched prior to paying. Did that person fail to do their homework and is that not as bad? Law Director Russell explained that most departments pay their bills through a purchase order. The legislature (when they enacted this special provision for municipal courts to create an additional tax to collect monies from all of the cases that come before it) had to enable the court (who typically do not do a purchase order type transaction) and so they placed in there a sentence that says that the funds paid from the municipal court assistance fund shall be paid by an order from the judge. So, the judge orders that the expenditure be made, and this orders the auditor to make it. The language at the bottom of the order says that if they fail to make this payment that they could be summoned to court and be held in contempt. This has happened in the last 10 years. The appointed office holder was summoned before the court for consideration of contempt when she objected to pay for a meal that exceeded the city's policy on limits on meals. He does not know that the judge had an intent to violate the law. He has not had a discussion with her. He has talked to her attorney, who has primarily been billing for hours on the funding dispute. This issue should not incur a large amount of fees. They want to get it resolved. This is the first step to do what they are obligated to do under the oath that they take. The expenditure was made without legal authority. They may find through the process that the court is offering some documentation of legal authority. To date, no legal authority has been offered by the court.

Other Business:

With no other business to be heard, the meeting was adjourned at 6:59 PM.

Chairman Schaber

Clerk of Council

March 4, 2019

Members present: Mr. Schaber, chairperson, Mr. Norris.

Members absent: Mr. Landon

With a quorum present, Mr. Schaber called the meeting to order at 7:24 PM.

Mr. Norris made a motion to approve the minutes from 01/22/2019; Mr. Schaber 2nd; Roll call: Ayes – Mr. Schaber, Mr. Norris; Nays – none. (2-0)

New Business:

Item 1: ORDINANCE TO AMEND THE YARGER REPORT BY CREATING A POSITION WITHIN THE MUNICIPAL COURT, SPECIFICALLY A CASE MANAGER POSITION, ESTABLISHING SALARY AND BENEFITS FOR SAID POSITION AND DECLARING AN EMERGENCY

Chief Probation Officer Stotts explained that this a \$30,000 grant that is funded through federal money through ADAMH to reinforce positive linkages for opiate addicts and offenders. This is not a statutory position. They can look at their other funds should they want to continue position beyond grant period (because it is not a statutory position). This is a position that would focus on linkage services with clients. Things like assuring that addicts get their 2nd, 3rd, and 4th vivitrol shot after they come out of jail. Vivitrol takes away craving for opiates and last about 30 days. They would do referrals for outpatient services, jobs, transportation. The primary focus is heroin addiction. There were three overdose deaths previous weeks. They cannot keep them in jail because of overcrowding. They need to try something else. They would like to have screenings in probation department and get them linked with case manager and services. They would like to invest more funds in electronic monitoring to help with jail issue. They do try to get people out of jail ASAP once they have vivitrol shot because of overcrowding. The appointment for next injection is about three weeks away. If they do not keep second appointment, then cravings come back, and they must start all over again.

Mr. Norris made a motion to recommend to council; Mr. Schaber 2nd; Roll call: Ayes – Mr. Schaber, Mr. Norris; Nays – none.

Legislation recommended to council (2-0)

Other Business:

With no other business to be heard, the meeting was adjourned at 7:34 PM.

Chairman Schaber

Clerk of Council

