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Secret talks

Peculiar's mayor receives 'conflicting opinions' on legality of discussions

**BY ALLEN EDMONDS
AND BRAD SEINER**

As evidence continued to mount that the Peculiar Board of Aldermen last week inappropriately discussed an across-the-board salary cut for city staff in secret, Mayor Ernie Jungmeyer on Tuesday said that he had received conflicting legal opinions on the legality of the meeting.

In the same interview, he told *The Star Herald* the board had discussed obtaining a \$100,000 line of credit from an area bank in a "closed work session" during the same July 21 board meeting — an apparent second Sunshine Law violation on the same day.

The sole dissenting vote on the banking issue came from alderman Jim Antonides, who, when asked separately when discussion on the credit line was held, paused before answering.

"I'm truthfully trying to think," he said. "I thought we came out of executive session and talked about it."

However, video of the meeting obtained this week showed no discussion of the credit line during the public portion of the meeting.

"I've always questioned executive session issues myself," he said. "In fact, the person you need to talk to is the mayor on that."

Jungmeyer said the credit line request was designed "to help our cash flow until we can get the tax receipts and everything in so we can continue to make our normal monthly payments. A lot of our taxes don't come in until January."

The issue "was discussed in our closed work session," the mayor said.

Regarding the executive session pay cut discussion, Antonides said there were "other issues involved in that, too, that I cannot bring up," besides the across-the-board proposal.

"Let's say that (the overall pay cut) was kind of an option out of several options," he said.

The Star Herald on Friday published an online story which detailed the July 21 meeting as reported by city administrator Brad Ratliff and raised the issue of a possible Sunshine Law violation.

Ratliff said two days after the meeting, the board had voted unanimously in favor of a 10-percent across-the-board pay cut for city employees. That account was backed by the city's draft version of the minutes of the meeting, which had been posted on the city Web site.

Those draft minutes have since been removed from the city's Web

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site.

Neither the pay cut nor the credit line request had been scheduled to be discussed, according to an agenda distributed in the days prior to the July 21 meeting. According to Ratliff, the pay cut was discussed in executive session, which would be an apparent violation of Missouri's Sunshine Law, which governs open meetings and records, according to Jean Maneke, attorney for the Missouri Press Association and a Sunshine Law expert.

Personnel matters regarding a group of employees, including pay cuts, are to be discussed in an open meeting, Maneke said.

"There was a case involving the North Kansas City School District years and years ago," Maneke said. "And the courts said if you're talking about groups of employees where you're not talking about individual employees, then you can't do that in closed session. It needs to be done in open session."

Jungmeyer said the board did discuss the overall pay reduction in executive session.

"Maybe, just maybe we should have discussed the 10 percent in open session and then waited to discuss the other (individual job actions), which we ended up not doing anything on."

But he remained unclear Tuesday on the legality of the board's action.

"We have conflicting opinions on that, OK? Our normal attorney says we're all right. A representative from the (Missouri Municipal League) says we weren't. A legal representative from (the Mid-America Regional Council) says we were. We didn't do it intentionally, by any means," Jungmeyer said.

An exception to the law does allow public boards to discuss individually identifiable employees in private so as not to violate personal privacy.

Following the closed session, the second of the night, aldermen re-entered the public meeting and voted unanimously for the wage cut, according to Ratliff. That description of events was verified by a video of the meeting, which was requested by *The Star Herald* on Friday and received on Tuesday.

The video showed votes being taken on both the credit line and wage cuts with no public discussion.

The 10-percent cut will take effect Aug. 1 and will run through Oct. 1, 2010, according to Ratliff.

"It hasn't gone through yet, but it was a discussion to make ends meet because, you know, revenues continue to drop," Ratliff said last week. "So, since revenues continue to drop, the mayor and the board directed me that starting August through next (fiscal) year, to lower salaries by 10 percent across the board, every employee from myself, down."

Ratliff said the board acted properly in discussing the matter behind closed doors.

"Basically, we discuss personnel issues in executive session," he said. "So, the discussion was the personnel matters, then they came out of executive session and voted publicly to do it."

"Personnel issues can range from termination of employees or problems with employees. It can be more than one employee, the funding of employees.

Anything that effects employees is an executive session issue."

At Maneke's suggestion, *The Star Herald* last week notified Cass County Prosecuting Attorney Teresa Hensley of the situation and filed a formal complaint with Attorney General Chris Koster.

According to Section 610.021 of the Missouri State Statutes, closed meetings and closed records are authorized when personnel matters such as "hiring, firing, disciplining or promoting particular employees by a public governmental body when personal information about the employee is discussed or recorded.

Though the board voted specifically to "instruct the city administrator to reduce salaries of all city staff by 10 percent across-the-board," Ratliff said last Thursday that aldermen were still discussing how the cut would be handled, whether "across the board or through furloughs."

Video of the meeting showed Alderman Holly Stark wording her motion exactly as it appeared in the draft motion, with no mention of further consideration. The motion was seconded by Antonides and no discussion occurred prior to the unanimous vote.

But Ratliff said last Thursday the matter was still the subject of further consideration.

"Right now, department heads are getting together with staff to work out what would be the best way to accomplish that. We're appreciative of the board letting the employees try to have some ownership in it."

For the past two and a half years, the city's operating budget has been cut by about 30 percent, according to Ratliff. He said he had told the board and Jungmeyer he had done everything he could to make cuts. That's why it came down to salary cuts.

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“At the last budget amendment three months ago, I told the board, ‘I’ve cut everywhere I think I can cut. The only thing left is employees if the revenues continue to deplete,’” he said. “Revenues have continued to deplete, so now they had to make a decision that basically everyone would feel the effect of.”

‘No prohibition against it’

In a telephone interview Friday afternoon, Peculiar city attorney Reid Holbrook strongly denied the allegation that aldermen violated provisions of Missouri’s Sunshine Law by discussing the across-the-board wage cut for city employees, an opinion not initially shared by the attorney general’s office.

“First of all, we went into executive session to discuss the possibility of layoffs or furloughs for certain, individually identifiable employees,” Holbrook said.

While refusing to directly admit that the overall wage cut was discussed in executive session, he said that in his reading of the Sunshine Law, he “could find no prohibition against” entering executive session to discuss allowable topics, but moving on to topics that aren’t allowed to be discussed in secret.

“I would welcome the opportunity to discuss any of this with your prosecutor or attorney general,” he said.

Holbrook is a founding member of the Overland Park, Kan., law firm Holbrook & Osborn.

The Star Herald on July 23 filed a Sunshine Law violation complaint against the city. A viewing of the video on Tuesday of this week

revealed that no discussion of wage issues occurred in the open section of the meeting, leaving open the question of when aldermen did discuss the across-the-board cut, if not in executive session.

According to staff attorney Patricia Churchill of Attorney General Chris Koster’s office, an initial reading of the board’s agenda and minutes indicated that it was possible that inappropriate discussion did occur behind closed doors.

“To the extent that the executive session included general discussion about the overall action (of cutting salaries across the board by 10 percent), that would not be appropriate,” Churchill said.

“And it just suggests that when you look at the minutes.

She said her first step would be to draft a letter to the board.

“It will be designed to invite a response to them; at this point, it’s just an informal inquiry, a review, of what’s occurred.”

She said actions that could be taken should her office determine a violation did occur might include a ordered new vote on any issue inappropriately discussed behind closed doors after a public discussion.

“That wouldn’t change the body’s decision necessarily, but at least the discussion would have been held in the open.”

She said any discussion of action effecting the group of employees, rather than individually identifiable employees, would be inappropriate behind closed doors, regardless of how the conversation started.

In response to Holbrook’s point that a direct prohibition, of such secondary discussion does not exist, Churchill was clear.

“It’s explicitly stated in the law that exceptions are construed narrowly and the law is interpreted broadly to favor openness.”

“The exception is explicitly for personal information.”

She also expressed concern regarding the vote directing Ratliff to begin investigating options for establishing a \$100,000 line of credit.

Holbrook said he could not recall on Friday when in the meeting the discussion on the credit line took place.

However, Jungmeyer said Tuesday that discussion was held during the “closed work session” prior to the board’s regular meeting on July 21.

“Certainly that deals with financial issues, so we would be concerned about that,” she said.

Nothing in the state’s Sunshine Law would appear to allow that discussion to be held in secret.

Moreover, the city’s agenda for that evening stated that the work session would be closed to discuss “personnel issues.” Any discussion in that session besides allowable personnel issues would appear to be a violation of state law.

City responds to allegation

Late Friday afternoon, Ratliff e-mailed the newspaper a response from the city, insisting that the board had handled the discussion legally.

“The city believes it has committed no violation and issues the following clarification.

“On Tuesday the board of aldermen and senior staff of the city went into a closed session pursuant to RSMo 610.021 (3) for one hour to discuss a revenue shortfall and potential solutions to prevent a reduction in city services,” the release said.

“One of the solutions considered was a reduction in force. Five individual employees were discussed and whether their employment should be terminated. Missouri law expressly authorizes the Peculiar Board of Aldermen to go into closed session to



discuss specific employees in order to protect their privacy. Since this was a work session, no vote was taken.”

In that release, there was no mention of the credit line discussion that Jungmeyer said this week had occurred during that session.

The release then described a second closed session that

took place later in the evening, during the board’s business meeting.

“The board of aldermen, following its regular meeting on Tuesday, again went into a closed session for two reasons. One of the reasons was to discuss litigation strategy with the city attorney as authorized by RSMo 610.021(1). A second

topic in this closed session was again the discussion of individual personnel and whether their termination as employees was in the city’s interest to deal with budgeting issues. Again, Missouri law, RSMo 610.021(3) authorizes a closed session. No vote was taken.”

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Ratliff says closed session was brief

Peculiar city administrator Brad Ratliff on Wednesday reiterated his position that any inappropriate discussions in closed session July 21 were brief in nature.

“The whole purpose of the executive session was for me to discuss actual people and laying them off,” Ratliff said. “As you can tell, the board didn’t act that favorably to it.”

Someone then spoke up, wanting to look for other possibilities.

“I think someone said, ‘I would rather make a cut across the board than lay these people off,’” Ratliff said.

They also mentioned a \$100,000 line of credit for shortfalls in the budget. Both topics are not allowed in executive session and city attorney Reid Holbrook tried to warn the board, according to Ratliff.

“When they brought up those questions, the attorney said, ‘Well, that’s a decision you need to make in an open forum,’” Ratliff said.

However brief the discussion on the two topics were, Sunshine Law prohibits it. Video of the July 21 meeting showed no discussion in the open segment of either topic before a motion was made and vote was taken.

“I’m just being honest with you, we didn’t have a whole lot of conversation about those issues,” Ratliff said. “The majority of the conversation was about those employees, those individual employees that I named.”