



Local Officers Compensation Commission

5 messages

Dave Askins <dave.askins@annarborchronicle.com>

Thu, May 9, 2013 at 5:06 PM

To: "Postema, Stephen" <spostema@a2gov.org>, "Higgins, Marcia" <MHiggins@a2gov.org>, "Hieftje, John" <JHieftje@a2gov.org>, "Briere, Sabra" <SBriere@a2gov.org>, "Kunselman, Stephen" <SKunselman@a2gov.org>, "Petersen, Sally" <spetersen@a2gov.org>, "Warpehoski, Chuck" <CWarpehoski@a2gov.org>, skailasapathy@a2gov.org
Bcc: Jeff Irwin <jeffmirwin@gmail.com>

Dear Mr. Postema,

As you might be aware, the state attorney general has now declined a request from state representative Jeff Irwin to issue an opinion on the question of whether a DDA board member is eligible to serve on the local officers compensation commission (LOCC). The question stems from the fact that Roger Hewitt simultaneously serves on the LOCC and the board of the Downtown Development Authority.

The state statute as well as the local ordinance on the LOCC stipulate that no member of any branch of government nor any family member can serve on the LOCC. From the local ordinance: "No member or employee of the legislative, judicial or executive branch of any level of government or members of the immediate family of such member or employee shall be eligible to be a member of the commission."

In cases where the law is clear – and it's simply education about the law that's needed, rather than an opinion and an analysis – the AG typically states in response to queries from legislators that the law is clear (in whatever way the law is clear). So the AG's decision not to issue an opinion, might therefore be reasonably construed as a decision not to affirm the city's implicit position. And the city's position seems to be that the DDA is not a part of the executive branch of government – even though we think it's clear that the DDA is, in fact, a part of the executive branch of our local government.

It's possible that Hewitt's appointment was made without adequate review of the relevant ordinance, and could be characterized as an oversight. But oversights still need to be corrected.

As to the question of whether the DDA is part of the executive branch of local government, three clear arguments point to the conclusion that it is, which we summarize here: (1) In connection with the debate about the calculation of DDA TIF capture, assistant city attorney Mary Fales has repeatedly opined that it's the DDA that is responsible for the execution of Chapter 7 of the city code – from which it follows that the DDA is part of the city's executive branch of government; (2) The DDA is characterized in the city's formal audit as a "component unit" of the city, which again points to the DDA's status as a part of the city's government; (3) Mayor John Hieftje has repeated and emphatically insisted that the DDA is an "arm of the city" – based on the kind of activity and actions the DDA has taken historically – which points to an analysis of the DDA as a part of the executive branch of the city government.

We don't think it's even a controversial question whether the DDA is a part of the executive branch of the city government – because we think it's obviously a part of the executive branch of the city government. And that means that Hewitt's simultaneous service on the board of the DDA and on the LOCC would be a violation of the city ordinance and the state statute.

We would remind you that we called your attention to this matter around two years ago. If you have an argument that leads to a different conclusion, we would encourage you to produce it as a written opinion to be filed with the city clerk – as required under the city charter.

It's worth noting that besides Hewitt, the city's Legistar system indicates only one other member of the seven-member LOCC has a current appointment (Eunice Burns).

Given that the LOCC is required to meet sometime this year and make a recommendation on city council and mayoral salaries (as 2013 is an odd-numbered year), we'd encourage you to advise your client in a timely fashion, so that the necessary appointments can be made to the LOCC.

Sincerely,

Dave Askins

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Dave Askins
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Dave Askins <dave.askins@annarborchronicle.com>
To: "Lumm, Jane" <JLumm@a2gov.org>

Thu, May 9, 2013 at 10:53 PM

[Quoted text hidden]

Dave Askins <dave.askins@annarborchronicle.com>
To: "Eaton, Jack" <jeaton@a2gov.org>

Tue, Nov 26, 2013 at 5:44 PM

Jack,

Appended below is an email I sent several months ago, so you have the same background as other councilmembers.

Cheers,

Dave

----- Forwarded message -----

From: Dave Askins <dave.askins@annarborchronicle.com>
Date: Thu, May 9, 2013 at 5:06 PM
Subject: Local Officers Compensation Commission

[Quoted text hidden]

Eaton, Jack <JEaton@a2gov.org>
To: Dave Askins <dave.askins@annarborchronicle.com>

Wed, Nov 27, 2013 at 3:12 PM

Dave,

Thanks for bringing this to my attention. Apparently, Council members received privileged communication on this subject that will be provided to me in response to my inquiry. That said, I will not be able to speak about the advice once I receive it.

Separately, I intend to follow up on the issue of the vacancies and the need to have that body meet and perform its responsibilities. Filling the vacancies will give Council a chance to discuss who is an appropriate member of the committee as a matter of policy, rather than as a matter of law. It does seem that the clock is running out on having this happen in 2013.

Hope you and Mary have a great Thanksgiving!

Jack

[Quoted text hidden]

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Dave Askins <dave.askins@annarborchronicle.com>

Wed, Nov 27, 2013 at 3:48 PM

To: "Eaton, Jack" <JEaton@a2gov.org>

Jack,

Thanks. I'll eschew familiar arguments on "opinions" and the city charter in favor of returning your holiday greeting in kind. Happy Thanksgiving!

Cheers,

Dave

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