

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, JANUARY 21, 2004

Present: Ald. Johnson (Chair) Sangiolo, Parker, Coletti, Hess-Mahan, Fischman

Also Present: Ald Baker

Others: Dan Funk (Law) Gayle Smalley (Law) Sandy Pooler (Executive Department)
Peter Karg (Elections) David Mofenson (Elections) Faye Cohen (Elections) Steve Smith
(Elections) Dede Forgione (Elections)

#514-03 ALD. JOHNSON requesting discussion of election process, practices and
hearings with new voting machines in preparation for the March
Presidential Primary.

ACTION: **HELD 7-0**

NOTE:

Deputy Secretary: Mr. Karg introduced Dede Forgione, Election
Commission Deputy Secretary, to the Committee. Ms. Forgione started
on December 8th and Mr. Karg informed the Committee that she has a
great background in Elections and was recruited from the Secretary of
State's Elections Division. She is probably one of the most knowledgeable
people in the state on the central voter registry. She also has a solid
knowledge on petition and nomination papers as well as an excellent
understanding of the census process.

Background: Chairman Johnson felt a dialogue with the Election
Commission regarding some major concerns was a very important issue.
Both the privacy in the voting booths as well as marking the ballot and
placement in the scanner had some problems. Other issues included
wobbly stations and computer glitches.

Mr. Mofenson observed that Mr. Karg has done an outstanding job. In his
view, a significant accomplishment has been the difference in the people
working at the polls. Faye Cohen and Stephen Smith also agreed that Mr.
Karg has done a great job. Ald. Coletti found the new voting system to be
excellent. Ald. Fischman also thought voting did go well.

Mr. Karg discussed the Help America Vote Act (HAVA) which was
passed in 2002. The HAVA Act gives grant money to cities and towns to
upgrade their election systems. There will be federal reimbursement of
approximately \$191,000 for upgrading the voting system. Mr. Karg

commented that the November election went extremely well with a 32% turnout. Out of the 15,000 people voting, Mr. Karg had no more than ten phone calls over various issues.

Mr. Karg also noted that the Elections Commission had recruited 240 poll workers who will be trained to assist voters at the polls. He said that Ms. Forgione had also developed a brochure to help educate voters about the new voting machines and procedures.

Issue - Privacy: Ald. Parker felt that the voting booths do not afford secret ballot elections. Privacy sleeves were not always offered and he did feel strongly that these issues should be worked on to allow a truly private vote. In response, Mr. Karg explained that custodians have been instructed to space booths as far apart as possible and all poll workers were instructed to offer voters a privacy sleeve whereby they could place their ballot for privacy. He noted that the current voting booths were selected for affordability and so they can be stored on site at polling places. The vendor will come out to test them to make sure they function properly and do not wobble before each election. On the privacy issue, Chairman Johnson suggested that this problem be explored further.

Issue – Vote Counting Procedures: Ald. Coletti was concerned about vote counting procedures, particularly the number of unauthorized persons who had access to the room where the voting machines were brought after the polls closed. He said it was also not clear who was in charge of the process. Ald. Coletti emphasized the importance of proper verification and an established protocol for handling the vote counting procedures on election night to ensure the integrity of the process. He also commented that the results were hard to read on the screens that were set up at City Hall because of they format.

Issue – Ballots: President Baker said he felt a sample ballot needs to go out and it should resemble what people are going to put in the machine. Chairman Johnson said she had not received a sample ballot. Mr. Karg told the Committee that ballots are sent out by postal districts.

Issue – Voter Education: President Baker also stated that prominently posted, clearly written and other measures were needed at the polling places to describe the new voting process and privacy procedures for voters.

Issue- Quality of Life for Poll Workers: Ald. Sangiolo said the lighting and heat were an issue at the Hamilton School. President Baker said poll workers had reported that they worked all day and they were hungry. In addition.

Issue – Software Glitch: Ald. Hess-Mahan asked about the software glitch and Mr. Karg responded that there was a problem on a memory card that did not total and the IT Department was forced to reboot. He said a few minutes were lost but the election results were still available by 9:30 pm. The Assistant IT Director, Joseph Mulvey, is going to take extensive training and will be able to deal on site with any issues of computer glitches. There is also the possibility of the company giving the City a better upgrade of the election tallying software.

Issue – Security: Chairman Johnson stated that she has concerns about the security of the computer software used by the City and the P-ROMs used to record the votes. She emphasized the importance of treating elections with the utmost sensitivity, confidentiality and security.

Final Action: Chairman Johnson asked that the item be held until all the issues raised have a written response. The Committee voted 7-0 to hold. (Ald. Johnson, Coletti, Parker, Fischman, Baker, Sangiolo, Hess-Mahan in favor of hold.)

REFERRED TO PROG. & SERV. AND FINANCE COMMITTEES

#295-99 ALD. GENTILE, COLETTI AND SALVUCCI, requesting an ordinance that would require any proposed settlement, which would include any funds from the Liability Trust Fund, must be approved by a majority vote of the Board of Aldermen.

ACTION: **APPROVED 7-0**

NOTE: The rules were suspended to allow Ald. Gentile to distribute further information on this docket item. (see attached) He felt this change would be a protection for the taxpayer.

Background: Dan Funk explained this item was discussed at length in February, 2000. The Committee voted on 4-0 February 23rd to propose to adopt the attached ordinance and to not go forward with special legislation. This item was also in Finance and it was not acted on until December of 2003. The Finance Committee report states that what was adopted was the same as what Programs and Services did, i.e., an amended ordinance. There was confusion between the two committees. The item before the committee was for an ordinance. Ald. Gentile preferred to have special legislation passed by the Board. Chairman Johnson asked that we address the item before us and if the will of the Committee was to create a (2) to the item to go for special legislation that it would occur.

Ald. Gentile would like the liability insurance fund language that simply reads that if there is going to be payments made from the account that as a policy matter, the payments would need to be approved by the City

Solicitor, the Mayor and the Board of Aldermen. He felt that special legislation was necessary to make the state law, which allows the City Solicitor to approve payments out of the Liability Trust Fund, consistent with the proposed ordinance.

City Solicitor Funk's position is that special legislation should be saved for those items that have compelling need. He feels the system in place works well. The ordinance puts this informal system on the books. He went on to say he feels the special legislation idea is over kill and the ordinance really gets it done and the Board's ultimate trump card is to not appropriate money into the liability trust fund if there is question about it being mishandled. Mr. Funk stressed that his practice has always been to come before the Board of Alderman and the Mayor to request approval for all payments out of the Liability Trust Fund and that this procedure is working and did not need to be "fixed" and that there was no reason to change this practice.

Final Action: The Committee voted to approve the ordinance 7-0 and no member of the Committee moved to create a (2). However the Chair reminded Ald. Gentile that if we desired to docket a (2) then we would be glad to take it up.

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#426-03 DAVID DONAHUE, GINNY GARDNER, ROBERT ANTONELLIS requesting His Honor the Mayor, appropriate 1.2 million dollars from free cash to the School Department for the purpose of eliminating all user fees, i.e. sports, bus, parking.

ACTION: NAN 7-0

#45-03 ALD. SANGIOLO & PARKER requesting discussion of possible amendments to the Tree Preservation Ordinance.

ACTION: **NAN 6-0-1 (Parker opposed)**
NOTE: Ald. Sangiolo plans to redocket this item.

#37-04(2) ALD. COLETTI proposing that the following **non-binding referendum** question be included as part of the proposed Special Election to be held in order to fill the vacancy for Alderman-at-Large in Ward 6: "Shall the Board of Aldermen appropriate bond funds totaling 106 million dollars plus interest for 20 years to demolish the existing Newton North High School building and construct a new Newton North High School?"

ACTION: **HELD 7-0**

NOTE:

The Committee was joined for this discussion by Dan Funk, Gayle Smalley, Peter Karg and David Mofenson.

Background: Ald. Coletti said that with the opportunity of having this Special Election for Alderman-at-Large, Ward 6, some Board members felt it would be an opportune time to consider having this non-binding referendum. Ald. Coletti docketed this item to try to save the city one election and added that the public is confused and do want to weigh in on this issue. The point Ald. Coletti stressed is the Mayor's office must let the aldermen know what they are thinking about and the Law Department has to tell us what is required to get a non-binding referendum on the ballot, hopefully at the same time the election is held.

President Baker said he asked for guidance from the Law Department on some issues. He has noted that a special election is required to either change the date for the aldermanic election to some time other than in the Spring and special legislation for an advisory question other than at a regular municipal election. President Baker pointed out that Governor Romney is making changes to the SBAB's procedures. The Governor is proposing that the funding for these projects be received up front instead of as a reimbursement. However, the City is not sure where that leaves the Newton North project. In the past we have had to consider bonding the entire sum and then get reimbursed from the state. If this proposal were to become effective, we would bond only the portion that is the municipal share. This will depend on what happens with the state but if this does occur, the bond authorization would be a smaller number.

NNHS Advisory Question: Ald. Parker said if we do an advisory question on the ballot, the board action will still be subject to referendum by a signature collection. Ald. Parker's idea would be to have a binding question on the ballot and not an advisory question. Ald. Coletti responded by saying that a binding referendum would have meant that the library would never have been built because the original referendum on bonding to build a new library failed and that was when the hotel/motel tax was instituted as well as the decision to and sell three buildings once they were vacated to come up with money to pay the bonds off. Since this was non-binding Ald. Coletti said the City was able to go forward.

Mr. Pooler stated that he thinks there are many steps that have to go forward with this high school project before a new high school is built. The most important of which is knowing if the state is going to pay for it as we can't afford a new high school if the state does not pay for it. At this point, Mr. Pooler feels it would not be useful to vote on anything that would put a question on the ballot because we don't know what would be voted on.

Ald. Coletti said that the City should seek input from the public by asking if they would support tearing down a \$52 million building and then building a new facility on the site. Mr. Pooler stated that if and when there is a question on a ballot, it should be framed in such a way to give people an honest expression of what is going on. The School Committee has to make a determination of what to do about that site. Ultimately, they will probably say to tear down the old school and build the fields there, but since that has not yet been determined, it would seem to be difficult to put a question out to the public.

Mr. Pooler responded that there is a process and the board is intricately involved in it, but before that happens the School Committee is going to opine on that issue. Mr. Pooler explained that the process should follow whatever it has to be in order to get it right this time.

President Baker stated he had real misgivings regarding taking out an advisory question in advance of the decision process. He felt we should see what is proposed and what the financing is as well as know what the state is going to give, and take it through an orderly process. If we get a referendum, that would then be dealt with. He noted that as elected officials, we are charged with making that decision. President Baker feels it would be ill advised to link this with the special election. In his view, the election should go forward to fill that vacancy as soon as possible.

Chairman Johnson was not in agreement with President Baker around the timing. There is concern that if the City calls a special at-large election and there is a poor turnout, it would be unfair to candidates. She also was not sure that an advisory question was needed, based on constituent input. She thinks that citizens need to have multiple opportunities for input, be educated and receive a great deal of communication from the Mayor and School Committee but ultimately the School Committee, the Board, and the Mayor were elected to make the decision. Chairman Johnson also pointed out that the Mayor and the School Committee must do a better job of educating and informing the Board of Aldermen and the public regarding the process and that aldermen should not have to learn about important decisions in the Newton TAB. Ald. Sangiolo had concern regarding whether we should go with a referendum. She does feel the Mayor should be afforded the opportunity to decide on putting that on the ballot. She felt that possibly the election could be set for November. Ald. Hess-Mahan feels it would be premature to address this issue and is not convinced that the referendum should be placed on the ballot. He reiterated that without good reason, we should not delay this special election.

State Requirement: Dan Funk explained the key for this type of non-binding advisory opinion to go on the ballot is that state law requires it go on the regular municipal election which would be close to two years from now and that would not meet the current time constraints. Special legislation would be needed for whenever it would be put on. The Secretary of State's office has to agree and would have to be set up in advance.

Options: Mr. Karg said he has had conversations with the Counsel to the Elections Division of the Secretary of State's office, Michelle Tassinari with the following answers

September 14th – If the Special election were to be conducted on the same day as the September 14th State primary, the original answer was no with a question framed on whether or not they would allow for Newton to add the question and the Ward 6 aldermanic race on to the printed state ballot. In a state election, the state pays for the ballots and they would not sign off on that because in a primary there are various political designations and certain political designations that cannot vote at the primary.

November Ballot: Another question Mr. Karg posed was whether or not the secretary's office would allow a city election on the same day as the primary with a separate election at the same time for a city election. Ms. Tassinari also said that she would entertain discussions on allowing the question and the Ward 6 race to appear on the November ballot.

Budget: An approximate budget for the original proposal which was to have a May 4th election would be about \$63,000. Based on a separate election on the same day as the September primary, costs would be about \$26,000. Rules were suspended to accept a document prepared and presented to the Committee by Mr. Karg.

Chairman Johnson said this is a complex issue that needs clarity with either a timeline or flow chart outlining what has to occur when in order to hold a special election for the Ward 6 At-Large election and have non-binding advisory question put before the City.

A motion was made to hold the item 7-0.

Respectfully submitted,

Marcia Johnson, Chair