Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Lioneld Jordan

Final Agenda
City of Fayetteville Arkansas
Special City Council Meeting
March 27, 2007

A meeting of the Fayetteville City Council will be held on March 27, 2007 at 5:30 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order
Roll Call
Pledge of Allegiance

A. NEW BUSINESS:

1. **Planning Commission Nomination Discussion:** Discussion of the nominees for the Planning Commission.

   THE CITY COUNCIL APPOINTED CANDY CLARK, CHRISTINE MYRES AND SEAN TRUMBO TO THE PLANNING COMMISSION.

   THE MAYOR VETOED THE APPOINTMENT OF CANDY CLARK.

   THE MAYOR'S VETO WILL BE DISCUSSED AT THE APRIL 3, 2007 CITY COUNCIL MEETING.

Meeting adjourned at 6:30 p.m.

Special City Council Meeting March 27, 07

Meeting Adjourned 6:30 PM

Subject:	**Roll**					
Motion To:						
Motion By:						
Seconded:						
	Ferrell	**Yes**				
	Lucas	**Yes**				
	Jordan	**Yes**				
	Gray	**Yes**				
	Thiel	**Yes**				
	Cook	**Yes**				
	Allen	**Yes**				
	Rhoads	**Yes**				
	Mayor Coody	**Yes**				
		9-0				

Subject:	**Planning Commission Nomination Discussion**					
Motion To:		**Go into Executive Session to discuss a personnel issue - Planning Commission Appointments**				
Motion By:		**Gray**				
Seconded:		**Ferrell**				
	Ferrell	**Yes**				
Failed	**Lucas**	**No**				
	Jordan	**No**				
	Gray	**Yes**				
	Thiel	**Yes**				
	Cook	**No**				
	Allen	**No**				
	Rhoads	**No**				
	Mayor Coody					
		3-5				

Subject:	**Planning Commission Nomination Discussion**					
Motion To:		**Appoint**	**Matthew Cabe, Christine Myres and Sean Trumbo**			
Motion By:		**Rhoads**				
Seconded:		**Ferrell**				
Failed	**Ferrell**	**Yes**				
	Lucas	**No**				
	Jordan	**No**				
	Gray	**Yes**				
	Thiel	**No**				
	Cook	**No**				
	Allen	**No**				
	Rhoads	**Yes**				
	Mayor Coody					
		3-5				

Subject:	**Planning Commission Nomination Discussion**					
Motion To:		**Appoint**	**Candy Clark, Christine Myres and Sean Trumbo**			
Motion By:		**Cook**				
Seconded:		**Allen**				
Passed	**Ferrell**	**No**				
	Lucas	**Yes**				
	Jordan	**Yes**				
Mayor Coody	**Gray**	**No**				
Vetoed the	**Thiel**	**Yes**				
Appointment	**Cook**	**Yes**				
of	**Allen**	**Yes**				
Candy Clark	**Rhoads**	**No**				
	Mayor Coody					
		5-3				

Subject:	**Planning Commission Nomination Discussion**					
Motion To:		**Override Mayor's Veto**				
Motion By:		**Allen**				
Seconded:		**Rhoads**				
Failed	**Ferrell**	**No**				
Override of	**Lucas**	**Yes**				
the Mayor's	**Jordan**	**Yes**				
Veto failed.	**Gray**	**No**				
Must have 6	**Thiel**	**Yes**				
affirmative	**Cook**	**Yes**				
votes to	**Allen**	**Yes**				
override.	**Rhoads**	**No**				
	Mayor Coody					
		5-3				
Subject:	**Planning Commission Nomination Discussion**					
Motion To:		**Appoint Matthew Cabe**				
Motion By:		**Rhoads**				
Seconded:		**Ferrell**				
Passed	**Ferrell**	**Yes**				
	Lucas	**Yes**				
	Jordan	**No**				
	Gray	**Yes**				
	Thiel	**Yes**				
	Cook	**Yes**				
	Allen	**Abstain**				
	Rhoads	**Yes**				
	Mayor Coody					
		6-1				

** Note: **The veto override and appointment of Matthew Cabe may not have been a legal action at this time. City Attorney Kit Williams will research this action and advise.**

Special City Council Meeting Marcn 27, 2007

Meeting Adjourned 6:30 PM

Subject:	Roll				
Motion To:					
Motion By:					
Seconded:					
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Mayor Coody	✓			

8-0

Subject:	Planning Commission Nomination Discussion			
Motion To:		Go into Executive Session to discuss Personnel: Planning Commissioners		
Motion By:		Gray		
Seconded:		Ferrell		
	Ferrell	✓		
	Lucas	N		
	Jordan	N		
	Gray	✓		
	Thiel	✓		
	Cook	N		
	Allen	N		
	Rhoads	N		
	Mayor Coody			

3-5 Failed

Special City Council Meeting Mar[illegible] 27, 2007

Subject:		Planning Comission Nomination Discussion			
Motion To:		Appoint →	Matthew Cabe Christine Nogeres		
Motion By:		Rhoads	Sean Trumbo.		
Seconded:		Ferrell			
	Ferrell	✓			
	Lucas	N			
	Jordan	N			
	Gray	✓			
	Thiel	N			
	Cook	N			
	Allen	N			
	Rhoads	✓			
	Mayor Coody				

3-5 failed

Subject:		Planning Comission Nomination Discussion			
Motion To:		Appoint →	Candy Clark		Override
Motion By:		Cook	Christine Myres		the Veto
Seconded:		Allen	Sean Trumbo		Allen / Rhoads
	Ferrell	N			N
	Lucas	✓			Y
Passed	**Jordan**	✓			Y
	Gray	N			N
	Thiel	✓			Y
	Cook	✓			Y
	Allen	✓			Y
	Rhoads	N			N
	Mayor Coody				

5-3 Passed

5-3
Veto Stands

Appoint Matthew Cake
Rhoads
Ferrell

Ferrell	✓
Lucas	✓
Jordan	N
Gray	✓
Theis	✓
Cook	✓
Allen	abstain
Rhoads	✓

6-1

Mayor Dan Coody

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Final Agenda
City of Fayetteville Arkansas
Special City Council Meeting
March 27, 2007

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Call to Order
Roll Call
Pledge of Allegiance

A. NEW BUSINESS:

1. **Planning Commission Nomination Discussion:** Discussion of the nominees for the Planning Commission.

Nominating Committee Report
Meeting Date: March 14, 2007
Room 326, City Hall 5:00pm

Members present: Kyle Cook, Adella Gray, Shirley Lucas, and Robert Rhoads.

The following is being submitted by the Nominating Committee to the entire City Council for consideration.

Planning Commission

Two committee members recommend the following candidates for appointment:

Candy Clark – one term ending 3/31/10
Christine Myres – one term ending 3/31/10
Sean Trumbo – one term ending 3/31/10.

Two committee members recommend the following candidates for appointment:

Matthew Cabe – one term ending 3/31/10
Shelly West – one term ending 3/31/10
Sean Trumbo – one term ending 3/31/10.

The full committee interviewed all planning commission applicants and proceeded to discuss each nominee. We talked about past practices of the nominating committee including reappointing applicants unless their attendance was lacking. We also discussed placing the most qualified candidates available on the commission and the past service of the three current members that have reapplied. This conversation continued for about 20 minutes until I requested we continue interviewing for the other boards because we still had applicants waiting. At that point, Robert Rhoads left the meeting and the discussion ended with three members of the committee voting to replace two of the current planning commission members. After finishing all the interviews, we again discussed the planning commission nominees, and at the end of that conversation, the nominating committee meeting concluded with the recommendation split two to two.

Nominating Committee Report
Meeting Date: March 14, 2007
Room 326, City Hall 5:00pm

Members present: Kyle Cook, Adella Gray, Shirley Lucas, and Robert Rhoads.

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Planning Commission

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Planning Commission

DESCRIPTION: The Planning Commission operates under the guidelines of both state statutes and Chapter 33, Article VII of the City of Fayetteville Code of Ordinances. The Planning Commission makes recommendations to the City Council regarding zoning changes, all annexations, and conditional uses. The Commission also makes recommendations concerning amendments or changes to the Master Street Plan, General Land Use Plan, or other comprehensive planning elements. It also exercises final approval jurisdiction over subdivision plans and large scale development plans as well as conditional use permit applications.

TERMS: Staggered three-year terms, ending March 31.

MEMBERS: The commission shall be composed of **nine** members. All members shall be citizens of Fayetteville, and at least two-thirds of whom shall not hold any other municipal office or appointment. No two members of the Commission shall be related by blood or marriage in the third degree, nor shall any two Commissioners have direct financial involvement. All Commissioners must disclose annually all real estate holdings in Fayetteville and the Fayetteville planning area, and any business or financial interest which could affect, or be affected by, decisions of the Commission. All Commissioners shall have a demonstrated interest, experience, or expertise in land use planning.

APPOINTMENT: Vacancies are filled by appointment from the governing body of the City.

CONTACT: Jeremy Pate, City Planning, 575-8267.

PUBLIC NOTIFICATION: A weekly meetings list is prepared by the City Clerk's office which is distributed to the press and posted on the City's web site: www.accessfayetteville.org

MEETING TIMES: The Commission meets the second and fourth Mondays of each month at 5:30 p.m. in the City Administration Building.

Planning Commission

Lois Bryant
412 E. Center
Fayetteville, AR 72701
521-4454 – Home
770-7252 – Work
Replaced Nancy Allen
04/01/06-03/31/09 1st Term

Candy Clark
Residence:
#1 South Stonebridge Road
Mailing Address
PO Box 1482
Fayetteville AR 72702
442-0086 – Home
443-5409 – Work
Replaced Don Bunch
04/01/04-03/31/07 1st Term

James Graves
PO Box 452
Fayetteville, AR 72701
442-5628 – Home
521-9996 – Work
Replaced Bob Estes
11/05/03-03/31/05 Unexpired Term
04/01/05-03/31/08 1st Term

Jill Anthes
610 N Olive Avenue
Fayetteville, AR 72701
443-3107 – Home
575-3371 – Work
Replaced Lorel Hoffman
04/01/03-03/31/06 1st Term
04/01/06-03/31/09 2nd Term

Christine Myres
1158 N. Maxwell Drive
Fayetteville, AR 72703-1516
582-5364 – Home
575-2576 – Work
Replaced Sharon Hoover
04/01/04-03/31/07 1st Term

Alan M. Ostner
312 S. Block Avenue
Fayetteville, AR 72701
571-4155 – Home
236-4156 – Work
Replaced Don Marr
07/16/02-03/31/05 Unexpired Term
04/01/05-03/31/08 1st Term

Audy Lack
2702 N. Emerald Avenue
Fayetteville, AR 72703
582-5628 – Home
443-7121 – Work
Replaced Loren Shackelford
04/01/05-03/31/08 1st Term

Hillary Harris
87 E. Texas Way
Fayetteville, AR 72701
200-5707 – Home
521-6611 – Work
Replaced Christian Vaught
04/01/06-03/31/09 1st Term

Sean Trumbo
2592 N. Gregg, Suite 22
Fayetteville, AR 72703
442-4325 – Home
263-8893 – Work
Replaced Alice Bishop Church
04/01/04-03/31/07 1st Term

The 2005 amendment inserted "or town" in (a)(1); and added present (a)(2)(C)(iii).

CASE NOTES

ANALYSIS

Election returns.
Mayors.
Meetings.
Quorum.

Election Returns.

The authority of a city council is limited to passing upon the face of election returns. Doherty v. Cripps, 82 Ark. 529, 102 S.W. 394 (1907).

Mayors.

The mayor is not an elected member of the city council, but only an ex-officio member by virtue of his executive position, and therefore his vote cannot be used in amending or repealing any part of an initiated act; thus, where only five members of a nine-member council voted to repeal an initiated ordinance, there was not the two-thirds majority required by Ark. Const. Amend. 7, and the mayor's favorable vote could not be counted as the sixth vote necessary to attain a two-thirds majority. Thompson v. Younts, 282 Ark. 524, 669 S.W.2d 471 (1984).

Where subdivision (b)(1)(B) repealed that part of this section that required a majority of the "aldermen" of a municipal corporation to approve appropriations, mayor of a city of first class could break five to five tie vote to pass no appropriation ordinance. Gibson v. City of Trumann, 311 Ark. 561, 845 S.W.2d 515 (1993).

Meetings.

The proceedings of a special meeting of a city council are legal if all the members had notice, whether all attended or not; when all the members of the council are voluntarily present in a council meeting and participate therein, it is a legal meeting for all purposes, unless the law provides otherwise, and an ordinance passed at such a meeting is valid. City of Mena v. Tomlinson Bros., 118 Ark. 166, 175 S.W. 1187 (1915).

Quorum.

An ordinance passed by less than the majority of all the members of a city council is void. Newbold v. City of Stuttgart, 145 Ark. 544, 224 S.W. 993 (1920).

14-43-502. Powers of council generally.

(a) The city council shall possess all the legislative powers granted by this subtitle and other corporate powers of the city not prohibited in it or by some ordinance of the city council made in pursuance of the provisions of this subtitle and conferred on some officer of the city.

(b)(1) The council shall have the management and control of finances, and of all the real and personal property belonging to the corporation.

(2)(A) The council shall provide the times and places of holding its meetings, which shall at all times be open to the public.

(B) The mayor or any three (3) aldermen of any city or town, regardless of size or classification, may call special meetings in the manner as may be provided by ordinance.

(3) The council shall appoint, or provide by ordinance, that the qualified voters of the city, of the wards, or districts as the case may require, shall elect all such city officers as shall be necessary for the good government of the city and for the due exercise of its corporate powers, and which shall have been provided by ordinance, as to whose appointment or election provision is not made in this subtitle and not provided by any general law of the state in reference to cities of the first class.

History. Acts 1875, No. 1, § 62, p. 1; C. & M. Dig., § 7744; Pope's Dig., § 9940; A.S.A. 1947, § 19-1011; Acts 2001, No. 365, § 1.

Amendments. The 2001 amendment inserted "of any city or town, regardless of size or classification" in (b)(2)(B) and made minor stylistic changes.

CASE NOTES

Committees.

A committee of a city council having jurisdiction over the city parks has no legislative powers, as the legislative powers are conferred upon the council sitting as such. Satterfield v. Fewell, 202 Ark. 67, 149 S.W.2d 949 (1941).

14-43-504. Powers and duties of mayor generally.

(a) The mayor of the city shall be its chief executive officer and conservator of its peace. It shall be his special duty to cause the ordinances and regulations of the city to be faithfully and constantly obeyed.

(b) The mayor shall:

(1) Supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against them, and cause all their violations of duty or other neglect to be properly punished or reported to the proper tribunal for correction;

(2) Have and exercise the power conferred on sheriffs, within the city limits, to suppress disorder and keep the peace; and

(3) Perform such other duties compatible with the nature of his office as the city council may from time to time require.

(c) [Repealed].

(d) The mayor shall, at the second regular meeting of the council in each year, and at such other times as he shall deem expedient, report to the council the municipal affairs of the city and recommend such measures to it as to him may seem advisable.

(e) The mayor of any city of the first class shall, in addition to the powers and duties already pertaining to that office, be clothed with, and exercise and perform, the following:

(1) A mayor shall have the power to veto, within five (5) days, Sundays excepted, after the action of the city council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.

(2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city clerk, to be laid before that meeting, a written statement of his reasons for so doing.

(B) No such ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written statement is laid before it, the council shall, by a vote of two-thirds (2/3) of all the aldermen elected thereto, pass it over the veto.

History. Acts 1875, No. 1, § 53, p. 1; 1885, No. 67, § 2, p. 92; 1893, No. 42, §§ 1, 2, p. 64; 1913, No. 226, § 1; C. & M. Dig., §§ 7697-7701; Pope's Dig., §§ 9840-9844; Acts 1979, No. 153, §§ 1, 2; A.S.A. 1947, §§ 19-1013, 19-1014; Acts 1991, No. 786, § 14; 1995, No. 534, § 2; 1995, No. 914, § 2.

Opinion No. 97-343

December 10, 1997

The Honorable Bill Walters
State Senator
P.O. Box 280
Greenwood, Arkansas 72936

Dear Senator Walters:

This official Attorney General opinion is rendered in response to a question you have raised concerning the override of a mayor's veto. You have asked:

> If the city council in a city of the second class fails to override a mayor's veto at the council meeting immediately following the mayor's veto because of a failure to obtain a quorum, can the council take up the matter at a subsequent council meeting and override the veto?

I must note initially my understanding that in most cities, the common practice for overriding vetoes is for the city council to override the veto at the meeting of the city council immediately following the veto. This clearly is a reasonable and efficient approach to the situation.

However, it is my opinion that the question of when a city council must act to override a mayor's veto is one that is not squarely addressed by state law and that will ultimately have to be clarified either legislatively or judicially. Nevertheless, having reviewed and analyzed the language of the relevant Arkansas statute and the decisions of other jurisdictions, I find that a rational interpretation of the statute is that the city council is not strictly required to act at the council meeting immediately following the veto, but that is must act within a reasonable time.

The statute that is relevant to this question is A.C.A. § 14-44-107, which states in pertinent part:

> (b)(1) The mayor in these cities shall have the power to veto, within five (5) days, Sundays excepted, after the action of the council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interest.
>
> (2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city recorder, to be laid before the meeting, a written statement of his reasons for so doing.
>
> (B) No ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written statement is laid before it, the council shall, by a vote of two-thirds (2/3) of all the aldermen elected thereto, pass it over the veto.

A.C.A. § 14-44-107(2).[1]

It is clear from the language of the above-quoted statute that the only occurrence related to the veto that *must* happen at the meeting immediately following the mayor's veto is the mayor's presentation to the city council of his or her written reasons for the veto. The city council is not required by the strict language of the statute to act at that time.

The only time restriction that is explicitly placed upon the city council by the statute is that it must act to override the veto "after" the mayor's reasons have been placed before it. The courts of other jurisdictions have considered similar provisions. In each of those jurisdictions, the relevant statutory provision, like Arkansas', required the mayor to veto within a certain time frame, or to present his

---

[1] The provisions of law governing the override of vetoes in cities of the first class are identical to those governing cities of the second class. See A.C.A. § 14-43-504(e)(1). Accordingly, my opinion as stated herein would be the same with regard to a city of the first class.

written reasons for doing so, at the next regular meeting of the city council after the veto. Those provisions, also like Arkansas', did not specify a time frame within which the city council was strictly required to act to override the mayor's veto, other than that the override must occur "after" presentation of the mayor's reasons for the veto. The courts in those jurisdictions held that the city council was not required to override the veto at the next meeting after the veto, but that it must act within a reasonable time period. See, e.g., *Hanna v. Rathje*, 171 N.W.2d 876 (1969); *Schmittou v. City of Nashville*, 208 Tenn. 290, 345 S.W.2d 874 (1961); *Warner v. Coatesville Borough*, 231 Pa. 141, 80 A. 576 (1911).

I find that this approach is a reasonable one. It is also supported by another aspect of the Arkansas statute. The language of A.C.A. § 14-44-107(2)(B) appears to require that the particular city council whose legislation was vetoed by the mayor must be the council who overrides the veto. This reading of the statute would require that the override occur during the time period when the terms of all members of the council who override the veto overlap.

For the foregoing reasons, I conclude that if the city council fails to obtain a quorum at the city council meeting immediately following the mayor's veto, the council is not strictly required to override the veto at the city council meeting immediately following the veto, but that the council must act to override the veto within a reasonable time.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Suzanne Antley.

Sincerely,

WINSTON BRYANT
Attorney General

WB:SBA/cyh

Opinion No. 2004-330

December 30, 2004

The Honorable Bobby Glover
State Senator
Post Office Box 1
Carlisle, Arkansas 72024

Dear Senator Glover:

I am writing in response to your request for my opinion on the question that I paraphrase as follows:

1. Since Section 2 of Ordinance No. 37 of 2004 of the City of Cabot states that members of the Cabot Utility Commission shall be elected by a majority vote of the City Council, does the Mayor have the authority to veto an appointment to the Commission?

2. Does state law authorize the Commission to appoint key personnel?

RESPONSE

In my opinion, in response to your first question the Mayor retains his veto power with respect to the City Council's election of Commissioners to the Cabot Utility Commission. In response to your second question, state law does authorize the Cabot Utility Commission to appoint key personnel insofar as the Ordinance 37 of 2004 has delegated hiring authority to the Commission.

Question 1: Does the Mayor have the authority to veto an appointment to the Cabot Utility Commission?

The powers and duties of a mayor are statutorily defined at Ark. Code Ann. § 14-43-504 (Repl. 1998). Specifically, subsection (e) (1) provides that:

> A mayor shall have the power to veto within five (5) days, Sundays excepted, after the action of the city council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.

Id. I have addressed a similar issue with regards to whether a mayor of a city of the first class has the power to veto an appointment to fill a vacant city council seat. Op. Att'y Gen 2004-270; *see also* Op. Att'y Gen. 91-078 (opining that the mayor of an incorporated town could veto the appointment of a council member); *and* Op. Att'y Gen. 90-078 (opining that a mayor of a city of the second class could veto an appointment to a City Council). I opined that the mayor of a city of the first class has the power to veto such an appointment. Op. Att'y Gen. 2004-270. I relied on Ark. Code Ann. § 14-43-504 as well as Arkansas Supreme Court precedent addressing a mayor's veto power, *Steward v. Rust*, 221 Ark. 286, 252 S.W.2d 816 (1952). *Steward* is particularly instructive as the Arkansas Supreme Court stated that the filling of a vacancy by a city council will take the form of an order or resolution. *Id.* at 287. Furthermore, a resolution was held not to require any particular format or written requirements. *Id.* The law has not changed materially on this point since the rendition of these opinions. I am enclosing a copy of Op. Att'y Gen. 2004-270.

Because the appointment of a commissioner will take the form of an order or resolution, the Mayor of Cabot will retain the veto power over such an appointment pursuant to Ark. Code Ann. § 14-53-504.

Question 2: Does State law authorize the Cabot Utility Commission to appoint key personnel?

In my opinion, the Commissioners may under State law appoint, by means of hiring within the powers granted by the Ordinance 37, key personnel for the Cabot Utilities Board.

This question presents an issue of whether the Cabot City Council has properly delegated authority to the Cabot Utility Commission through Ordinance No. 37 of 2004. A municipality has only the powers expressly provided by the legislature of

Fayetteville
ARKANSAS

OPERATIONS DIRECTOR

To: City Council
From: Gary Dumas
Director of Operations
Date: March 19, 2007

Re: Planning Commission Appointments

The Divisions of Planning, Engineering, Community Resources, Building Safety, Water and Waste Water, Parking, Human Resources, Building Services, Fleet, Solid Waste, Parks, and Transportation report to the Director of Operations.

It therefore is my duty to be responsive to issues affecting their ability to perform effectively and efficiently their essential job functions and to serve you, the Council, and the Public, to whom we should all be responsive.

For several, several months I have been aware of conflict issues and public statements made by individual members of the Planning Commission to City Staff. There are certain levels of respect that all public officials are expected to convey.

It is unfortunate that we have the need to address these issues in public since it does involve what essentially amounts to a personnel issue. Personnel issues are typically handled in private, in an effort to avoid public embarrassment of individuals. However, there has been an unwillingness to address these issues in a more quiet and compassionate manner. Therefore in order to attempt to resolve this personnel issue, I and we are unfortunately having this public discussion.

Given where we are today, on the verge of appointing and reappointing Planning Commissioners, I must express publicly my concerns for the benefit of those who report to me, and more importantly, in an effort to maintain what I consider to be a highly motivated and competent Staff performing effectively and efficiently for the public.

For the past several months the Staff has been concerned about the lack of respect that certain members of the Planning Commission have been displaying toward Staff and the public.

No member of the Staff expects the volunteer or elected body to concur unquestioningly with the Staff recommendation. Staff recommendations consider the Code of Ordinances, the State Law, Case Law, adopted plans, and their expert opinion. The volunteer or elected body or individual members may not agree with that recommendation, but I think that all will agree that it is well reasoned and well thought out and is a studied opinion that establishes where debate can begin.

113 West Mountain
Fayetteville, Arkansas 72701
Office phone - 479-575-8330
Fax - 479-575-8257
E-mail - gdumas@ci.fayetteville.ar.us

RECEIVED
MAR 28 2007
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Disagreement and discussion are a part of the political process. However disrespect, personal attacks, and dismissal of adopted policies and professional opinion should not be a part of that process and if allowed to continue will marginalize the discussion and move it to the negative extremes. Additionally, this type of behavior, which is unacceptable from your employees, will impact the Staffs' ability to address other Council priorities beyond staffing the Planning Commission, such as housing affordability and the street bond program.

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Fayetteville, Arkansas 72701
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As Mayor, it is my responsibility to recommend policies that protect the well-being of our residents and increase their quality of life through the preservation of our natural environment and the maintenance of Fayetteville's economic vitality. It is equally important as the senior administrator of this organization that I do everything I can to provide a healthy and productive working environment for our staff. Fayetteville is incredibly fortunate to have the most professional, hard working and dedicated staff in Arkansas and one of the best in the country. As elected officials, we must insist that city government operate in a manner that fosters respect and civility toward our residents and our staff.

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It is clear to me after reviewing planning commission activities and consulting with my staff that such an environment exists, which is clearly contrary to the public interest and the best interest of this organization. Therefore I am required to use my authority to veto the appointment of Commissioner Clark to the Fayetteville Planning Commission.

I ask the City Council to reconsider our deep pool of excellent applicants and nominate another person for this position.

Dan Coody 3/28/07

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MAR 28 2007
CITY OF FAYETTEVILLE
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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Dan Coody**, Mayor
City Council
Sondra Smith, City Clerk/Treasurer

CC: **Jeremy Pate**, Director of Current Planning

FROM: **Kit Williams**, City Attorney

DATE: **March 28, 2007**

RE: **Mayoral power and proper procedure to veto appointment to Planning Commission**

A.C.A. §14-43-504 (e) provides for the veto power of the Mayor.

> "(e) The mayor of any city of the first class shall, in addition to the powers and duties already pertaining to that office, be clothed with, and exercise and perform, the following:
>
> > (1) A mayor shall have the power to veto, within five (5) days, Sundays excepted, after the action of the City Council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.
>
> "(2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city clerk, to be laid before that meeting, a written statement of his reasons for so doing.
>
> " (B) No such ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written

> statement is laid before it, the council shall, by a vote of two-thirds (2/3) of all the aldermen elected thereto, pass it over the veto."

My research has discovered two Arkansas Attorney General Opinions (No. 93-165 of July 6, 1993 and No. 2004-330 of December 30, 2004) which support the Mayor's power to veto an appointment to the Planning Commission. I have attached the first two pages of the 2004 opinion dealing with this issue.

The issue of correct procedure must also be addressed. I believe you remember that prior to your vote to attempt to override the Mayor's veto last night I stated that I believed the veto had to be in writing and filed with the City Clerk before the City Council could take action. As you can see from the quoted statute, that is the correct procedure. I warned you that your vote to override might be ineffectual, and I now opine that it was.

I realize that no one wants this uncomfortable uncertainty to continue, but my duty is to objectively analyze state law and try to ensure compliance with that law regardless of personal desires or any other factors.

The statutory authority clearly sets forth the required procedure:

> "In case of a veto, … the mayor shall file in the office of the city clerk … a written statement of his reasons for doing so." A.C.A. §14-43-504 (e)(2)(A).

The "shall" makes this procedure mandatory. Mayor Coody clearly enunciated his reasons for his veto, however to be effective under state law, his written veto message must be filed in the City Clerk's office within five days of your action. I do not believe an oral veto meets the statutory requirements.

I researched further Arkansas Attorney General Opinions on this issue and found No. 97-343 (attached) of December 10, 1997, which is very instructive. That Opinion states:

> "It is clear from the language of the above quoted statute that the only occurrence related to the veto that *must* happen at the meeting immediately following the mayor's veto is the mayor's

presentation to the city council of his or her written reasons for the veto." (emphasis in original).

Obviously, an immediate oral veto message after the passage of an ordinance, resolution or order (motion) is not contemplated or authorized by the statute. The Attorney General's Opinion continues:

> "The only time restriction that is explicitly placed upon the city council by the statute is that it must act to override the veto **'after' the mayor's reasons have been placed before it.**"

The "written statement of his reasons" shall "be laid before that meeting (the next regular meeting of the council). A.C.A. §14-43-504 (e)(2)(A). Prior to the "written statement of his reasons for (the veto)" being "laid before that meeting", the City Council may not act upon the veto.

CONCLUSION

The oral statement by Mayor Coody announced his intention to veto the reappointment of the Planning Commission, but until he files his "written statement of his reasons for so doing" "in the office of the city clerk", his statutory veto power has NOT been fully exercised. Because the attempted verbal veto was not immediately effective, the reappointment of the Planning Commissioners was not vetoed at the Special City Council meeting (and will not be until the written statement is filed in the City Clerk's office).

This means that the City Council lacked any authority to attempt to override the veto (which cannot be done until "the next regular meeting of the council"). Also since the attempted verbal veto was not immediately effective, there was no empty position to appoint another Planning Commissioner applicant.

Everything done after the Mayor read his veto message was thus, ineffective and of no legal consequence (just as I warned might be the case prior to your vote).

Opinion No. 2004-330

December 30, 2004

The Honorable Bobby Glover
State Senator
Post Office Box 1
Carlisle, Arkansas 72024

Dear Senator Glover:

I am writing in response to your request for my opinion on the question that I paraphrase as follows:

1. Since Section 2 of Ordinance No. 37 of 2004 of the City of Cabot states that members of the Cabot Utility Commission shall be elected by a majority vote of the City Council, does the Mayor have the authority to veto an appointment to the Commission?

2. Does state law authorize the Commission to appoint key personnel?

RESPONSE

In my opinion, in response to your first question the Mayor retains his veto power with respect to the City Council's election of Commissioners to the Cabot Utility Commission. In response to your second question, state law does authorize the Cabot Utility Commission to appoint key personnel insofar as the Ordinance 37 of 2004 has delegated hiring authority to the Commission.

Question 1: Does the Mayor have the authority to veto an appointment to the Cabot Utility Commission?

The powers and duties of a mayor are statutorily defined at Ark. Code Ann. § 14-43-504 (Repl. 1998). Specifically, subsection (e) (1) provides that:

> A mayor shall have the power to veto within five (5) days, Sundays excepted, after the action of the city council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.

Id. I have addressed a similar issue with regards to whether a mayor of a city of the first class has the power to veto an appointment to fill a vacant city council seat. Op. Att'y Gen 2004-270; *see also* Op. Att'y Gen. 91-078 (opining that the mayor of an incorporated town could veto the appointment of a council member); *and* Op. Att'y Gen. 90-078 (opining that a mayor of a city of the second class could veto an appointment to a City Council). I opined that the mayor of a city of the first class has the power to veto such an appointment. Op. Att'y Gen. 2004-270. I relied on Ark. Code Ann. § 14-43-504 as well as Arkansas Supreme Court precedent addressing a mayor's veto power, *Steward v. Rust*, 221 Ark. 286, 252 S.W.2d 816 (1952). *Steward* is particularly instructive as the Arkansas Supreme Court stated that the filling of a vacancy by a city council will take the form of an order or resolution. *Id.* at 287. Furthermore, a resolution was held not to require any particular format or written requirements. *Id.* The law has not changed materially on this point since the rendition of these opinions. I am enclosing a copy of Op. Att'y Gen. 2004-270.

Because the appointment of a commissioner will take the form of an order or resolution, the Mayor of Cabot will retain the veto power over such an appointment pursuant to Ark. Code Ann. § 14-53-504.

Question 2: Does State law authorize the Cabot Utility Commission to appoint key personnel?

In my opinion, the Commissioners may under State law appoint, by means of hiring within the powers granted by the Ordinance 37, key personnel for the Cabot Utilities Board.

This question presents an issue of whether the Cabot City Council has properly delegated authority to the Cabot Utility Commission through Ordinance No. 37 of 2004. A municipality has only the powers expressly provided by the legislature of

Opinion No. 97-343

December 10, 1997

The Honorable Bill Walters
State Senator
P.O. Box 280
Greenwood, Arkansas 72936

Dear Senator Walters:

This official Attorney General opinion is rendered in response to a question you have raised concerning the override of a mayor's veto. You have asked:

> If the city council in a city of the second class fails to override a mayor's veto at the council meeting immediately following the mayor's veto because of a failure to obtain a quorum, can the council take up the matter at a subsequent council meeting and override the veto?

I must note initially my understanding that in most cities, the common practice for overriding vetoes is for the city council to override the veto at the meeting of the city council immediately following the veto. This clearly is a reasonable and efficient approach to the situation.

However, it is my opinion that the question of when a city council must act to override a mayor's veto is one that is not squarely addressed by state law and that will ultimately have to be clarified either legislatively or judicially. Nevertheless, having reviewed and analyzed the language of the relevant Arkansas statute and the decisions of other jurisdictions, I find that a rational interpretation of the statute is that the city council is not strictly required to act at the council meeting immediately following the veto, but that is must act within a reasonable time.

The statute that is relevant to this question is A.C.A. § 14-44-107, which states in pertinent part:

> (b)(1) The mayor in these cities shall have the power to veto, within five (5) days, Sundays excepted, after the action of the council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interest.
>
> (2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city recorder, to be laid before the meeting, a written statement of his reasons for so doing.
>
> (B) No ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written statement is laid before it, the council shall, by a vote of two-thirds (2/3) of all the aldermen elected thereto, pass it over the veto.

A.C.A. § 14-44-107(2).[1]

It is clear from the language of the above-quoted statute that the only occurrence related to the veto that *must* happen at the meeting immediately following the mayor's veto is the mayor's presentation to the city council of his or her written reasons for the veto. The city council is not required by the strict language of the statute to act at that time.

The only time restriction that is explicitly placed upon the city council by the statute is that it must act to override the veto "after" the mayor's reasons have been placed before it. The courts of other jurisdictions have considered similar provisions. In each of those jurisdictions, the relevant statutory provision, like Arkansas', required the mayor to veto within a certain time frame, or to present his

---

[1] The provisions of law governing the override of vetoes in cities of the first class are identical to those governing cities of the second class. See A.C.A. § 14-43-504(e)(1). Accordingly, my opinion as stated herein would be the same with regard to a city of the first class.

written reasons for doing so, at the next regular meeting of the city council after the veto. Those provisions, also like Arkansas', did not specify a time frame within which the city council was strictly required to act to override the mayor's veto, other than that the override must occur "after" presentation of the mayor's reasons for the veto. The courts in those jurisdictions held that the city council was not required to override the veto at the next meeting after the veto, but that it must act within a reasonable time period. See, e.g., *Hanna v. Rathje*, 171 N.W.2d 876 (1969); *Schmittou v. City of Nashville*, 208 Tenn. 290, 345 S.W.2d 874 (1961); *Warner v. Coatesville Borough*, 231 Pa. 141, 80 A. 576 (1911).

I find that this approach is a reasonable one. It is also supported by another aspect of the Arkansas statute. The language of A.C.A. § 14-44-107(2)(B) appears to require that the particular city council whose legislation was vetoed by the mayor must be the council who overrides the veto. This reading of the statute would require that the override occur during the time period when the terms of all members of the council who override the veto overlap.

For the foregoing reasons, I conclude that if the city council fails to obtain a quorum at the city council meeting immediately following the mayor's veto, the council is not strictly required to override the veto at the city council meeting immediately following the veto, but that the council must act to override the veto within a reasonable time.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Suzanne Antley.

Sincerely,

WINSTON BRYANT
Attorney General

WB:SBA/cyh

The 2005 amendment inserted "or town" in (a)(1); and added present (a)(2)(C)(iii).

CASE NOTES

Analysis

Election returns.
Mayors.
Meetings.
Quorum.

Election Returns.

The authority of a city council is limited to passing upon the face of election returns. Doherty v. Cripps, 82 Ark. 529, 102 S.W. 394 (1907).

Mayors.

The mayor is not an elected member of the city council, but only an ex-officio member by virtue of his executive position, and therefore his vote cannot be used in amending or repealing any part of an initiated act; thus, where only five members of a nine-member council voted to repeal an initiated ordinance, there was not the two-thirds majority required by Ark. Const. Amend. 7, and the mayor's favorable vote could not be counted as the sixth vote necessary to attain a two-thirds majority. Thompson v. Younts, 282 Ark. 524, 669 S.W.2d 471 (1984).

Where subdivision (b)(1)(B) repealed that part of this section that required a majority of the "aldermen" of a municipal corporation to approve appropriations, mayor of a city of first class could break five to five tie vote to pass no appropriation ordinance. Gibson v. City of Trumann, 311 Ark. 561, 845 S.W.2d 515 (1993).

Meetings.

The proceedings of a special meeting of a city council are legal if all the members had notice, whether all attended or not; when all the members of the council are voluntarily present in a council meeting and participate therein, it is a legal meeting for all purposes, unless the law provides otherwise, and an ordinance passed at such a meeting is valid. City of Mena v. Tomlinson Bros., 118 Ark. 166, 175 S.W. 1187 (1915).

Quorum.

An ordinance passed by less than the majority of all the members of a city council is void. Newbold v. City of Stuttgart, 145 Ark. 544, 224 S.W. 993 (1920).

14-43-502. Powers of council generally.

(a) The city council shall possess all the legislative powers granted by this subtitle and other corporate powers of the city not prohibited in it or by some ordinance of the city council made in pursuance of the provisions of this subtitle and conferred on some officer of the city.

(b)(1) The council shall have the management and control of finances, and of all the real and personal property belonging to the corporation.

(2)(A) The council shall provide the times and places of holding its meetings, which shall at all times be open to the public.

(B) The mayor or any three (3) aldermen of any city or town, regardless of size or classification, may call special meetings in the manner as may be provided by ordinance.

(3) The council shall appoint, or provide by ordinance, that the qualified voters of the city, of the wards, or districts as the case may require, shall elect all such city officers as shall be necessary for the good government of the city and for the due exercise of its corporate powers, and which shall have been provided by ordinance, as to whose appointment or election provision is not made in this subtitle and not provided by any general law of the state in reference to cities of the first class.

History. Acts 1875, No. 1, § 62, p. 1; C. & M. Dig., § 7744; Pope's Dig., § 9940; A.S.A. 1947, § 19-1011; Acts 2001, No. 365, § 1.

Amendments. The 2001 amendment inserted "of any city or town, regardless of size or classification" in (b)(2)(B) and made minor stylistic changes.

CASE NOTES

Committees.

A committee of a city council having jurisdiction over the city parks has no legislative powers, as the legislative powers are conferred upon the council sitting as such. Satterfield v. Fewell, 202 Ark. 67, 149 S.W.2d 949 (1941).

14-43-504. Powers and duties of mayor generally.

(a) The mayor of the city shall be its chief executive officer and conservator of its peace. It shall be his special duty to cause the ordinances and regulations of the city to be faithfully and constantly obeyed.

(b) The mayor shall:

(1) Supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against them, and cause all their violations of duty or other neglect to be properly punished or reported to the proper tribunal for correction;

(2) Have and exercise the power conferred on sheriffs, within the city limits, to suppress disorder and keep the peace; and

(3) Perform such other duties compatible with the nature of his office as the city council may from time to time require.

(c) [Repealed].

(d) The mayor shall, at the second regular meeting of the council in each year, and at such other times as he shall deem expedient, report to the council the municipal affairs of the city and recommend such measures to it as to him may seem advisable.

(e) The mayor of any city of the first class shall, in addition to the powers and duties already pertaining to that office, be clothed with, and exercise and perform, the following:

(1) A mayor shall have the power to veto, within five (5) days, Sundays excepted, after the action of the city council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.

(2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city clerk, to be laid before that meeting, a written statement of his reasons for so doing.

(B) No such ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written statement is laid before it, the council shall, by a vote of two-thirds (2/3) of all the aldermen elected thereto, pass it over the veto.

History. Acts 1875, No. 1, § 53, p. 1; 1885, No. 67, § 2, p. 92; 1893, No. 42, §§ 1, 2, p. 64; 1913, No. 226, § 1; C. & M. Dig., §§ 7697-7701; Pope's Dig., §§ 9840-9844; Acts 1979, No. 153, §§ 1, 2; A.S.A. 1947, §§ 19-1013, 19-1014; Acts 1991, No. 786, § 14; 1995, No. 534, § 2; 1995, No. 914, § 2.

As Mayor, it is my responsibility to recommend policies that protect the well-being of our residents and increase their quality of life through the preservation of our natural environment and the maintenance of Fayetteville's economic vitality. It is equally important as the senior administrator of this organization that I do everything I can to provide a healthy and productive working environment for our staff. Fayetteville is incredibly fortunate to have the most professional, hard working and dedicated staff in Arkansas and one of the best in the country. As elected officials, we must insist that city government operate in a manner that fosters respect and civility toward our residents and our staff.

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Fayetteville
ARKANSAS

OPERATIONS DIRECTOR

To: City Council
From: Gary Dumas
Director of Operations
Date: March 19, 2007

Re: Planning Commission Appointments

The Divisions of Planning, Engineering, Community Resources, Building Safety, Water and Waste Water, Parking, Human Resources, Building Services, Fleet, Solid Waste, Parks, and Transportation report to the Director of Operations.

It therefore is my duty to be responsive to issues affecting their ability to perform effectively and efficiently their essential job functions and to serve you, the Council, and the Public, to whom we should all be responsive.

For several, several months I have been aware of conflict issues and public statements made by individual members of the Planning Commission to City Staff. There are certain levels of respect that all public officials are expected to convey.

It is unfortunate that we have the need to address these issues in public since it does involve what essentially amounts to a personnel issue. Personnel issues are typically handled in private, in an effort to avoid public embarrassment of individuals. However, there has been an unwillingness to address these issues in a more quiet and compassionate manner. Therefore in order to attempt to resolve this personnel issue, I and we are unfortunately having this public discussion.

Given where we are today, on the verge of appointing and reappointing Planning Commissioners, I must express publicly my concerns for the benefit of those who report to me, and more importantly, in an effort to maintain what I consider to be a highly motivated and competent Staff performing effectively and efficiently for the public.

For the past several months the Staff has been concerned about the lack of respect that certain members of the Planning Commission have been displaying toward Staff and the public.

No member of the Staff expects the volunteer or elected body to concur unquestioningly with the Staff recommendation. Staff recommendations consider the Code of Ordinances, the State Law, Case Law, adopted plans, and their expert opinion. The volunteer or elected body or individual members may not agree with that recommendation, but I think that all will agree that it is well reasoned and well thought out and is a studied opinion that establishes where debate can begin.

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