

**MINUTES OF A SPECIAL MEETING OF THE
DuPAGE WATER COMMISSION
HELD ON THURSDAY, MARCH 25, 2010
600 E. BUTTERFIELD ROAD
ELMHURST, ILLINOIS**

The meeting was called to order by Chairman L. Rathje at 7:02 P.M.

Commissioners in attendance: T. Elliott, W. Maio, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Zay, and L. Rathje

Commissioners Absent: T. Bennington, E. Chaplin, L. Hartwig, F. Saverino, and D. Zeilenga

Also in attendance: T. McGhee, M. Crowley, R. Skiba, C. Johnson, E. Kazmierczak, J. Nesbitt, J. Schori, R. C. Bostick, and F. Frelka

APPOINTMENT OF TREASURER

Chairman Rathje noted that he would like to appoint Commissioner Zeilenga as the Commission's Treasurer but was unable to reach Commissioner Zeilenga to discuss whether he would be interested in serving as the Treasurer. As such, Chairman Rathje suggested deferring the matter to the April Board meeting.

Chairman Rathje asked Acting General Manager McGhee to explain the urgency of appointing a new Treasurer. Acting General Manager McGhee explained that a Treasurer is needed to sign for the \$40 million short-term debt certificates and to sign checks.

APPOINTMENT OF ACTING GENERAL MANAGER

Chairman Rathje asked Acting General Manager McGhee to explain the urgency of filling the position of General Manager. Acting General Manager McGhee explained that an acting General Manager is needed for basic payroll, hiring and firing employees, and other tasks that only the General Manager is authorized to handle. Acting General Manager McGhee stated that currently two positions are vacant and need to be filled in the Operations Department and the Instrumentation/Remote Facilities Department.

Chairman Rathje noted that Commissioner Bennington recommended that the Board consider utilizing the services of Executive Service Corporation to locate potential candidates to serve as an interim General Manager to handle day-to-day responsibilities until it is determined how the Commission will be restructured. Chairman Rathje stated that he had scheduled a meeting with Executive Service Corporation for Friday, March 26th at 11:00 A.M. to discuss the Commission's needs and that he will report back to the Board with recommendations.

Commissioner Mueller referred back to the March 11th meeting, noting that he was under the impression that the Board appointed Mr. McGhee to be the Acting General Manager. Chairman Rathje clarified that even though it was the consensus of the

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Commissioners present to appoint Mr. McGhee as the Acting General Manager, the Board needed to take formal action in open session.

Noting the importance of continuing with day-to-day operations, Commissioner Maio stated that he had no problem formally appointing Mr. McGhee as the Acting General Manager so long as Mr. McGhee understood that the appointment is temporary and that there would be no contract or other special arrangement. With those caveats in mind, Commissioner Maio moved to confirm Chairman Rathje's appointment of Terrance McGhee as Acting General Manager of the DuPage Water Commission. Seconded by Commissioner Mueller.

After Commissioner Mueller confirmed that McGhee could submit his resume for the permanent General Manager's position, the motion was unanimously approved by a Roll Call Vote:

Ayes: T. Elliott, W. Maio, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Zay, and L. Rathje

Nays: None

Absent: T. Bennington, E. Chaplin, L. Hartwig, F. Saverino, and D. Zeilenga

FORENSIC AUDIT REPORT

Commissioner Maio moved to waive the attorney-client privilege with respect to the Forensic Audit Report prepared by Jenner & Block, and to release the report with the redactions recommended by staff counsel. Seconded by Commissioner Elliott.

Commissioner Zay noted his confusion as to why the Commission is being invoiced separately by Crowe Horwath, and asked whether paying Crowe Horwath directly waived the attorney-client privilege. Commissioner Elliott responded that Crowe Horwath was acting under the sole direction of Jenner & Block, preserving the attorney-client privilege, but the Commission had always been responsible for paying Crowe Horwath directly.

Commissioner Mueller noted concerns with specific sensitive material that was included in the forensic audit report and asked if it would be removed before the report was released to the public. Staff Attorney Crowley replied that a memorandum had been provided to the Board identifying the sentences required by law to be redacted before release to the public, as well as other sensitive material that was arguably permissible to redact under the Illinois Freedom of Information Act.

Commissioner Zay stated that during the March Board meeting, it was noted that only the Board members were to receive a copy of the forensic audit report and, as such, Commissioner Zay asked why Staff Attorney Crowley had received a copy of the report, who authorized the release to Staff Attorney Crowley, and why Jenner & Block did not handle the redactions. Chairman Rathje replied that it was his direction to Jenner &

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Block to release a copy of the forensic audit report to Staff Attorney Crowley for review and identification of the redactions required by law to be made before the report was released to the public.

With no further discussion, the motion was unanimously approved by a Roll Call Vote:

Ayes: T. Elliott, W. Maio, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Zay, and L. Rathje

Nays: None

Absent: T. Bennington, E. Chaplin, L. Hartwig, F. Saverino, and D. Zeilenga

**RETAIN FINANCIAL ADVISOR
FOR MATTERS OF DISCLOSURE AND FINANCIAL PLANNING**

Commissioner Mueller moved to retain the services of Public Sector Group, Inc. as Financial Advisor for Matters of Disclosure and Financial Planning at a rate of \$300.00 per hour plus expenses. Commissioner Mathews seconded the motion.

After Commissioner Zay recommended adding a cap of \$20,000.00, and Commissioner Mueller as the maker of the motion, and Commissioner Mathews as the second, accepted Commissioner Zay's recommendation, the amended motion to retain the services of Public Sector Group, Inc. as Financial Advisor for Matters of Disclosure and Financial Planning, at a rate of \$300.00 per hour plus expenses, but not-to-exceed \$20,000.00 without further Board authorization, was unanimously approved by a Roll Call Vote:

Ayes: T. Elliott, W. Maio, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Zay, and L. Rathje

Nays: None

Absent: T. Bennington, E. Chaplin, L. Hartwig, F. Saverino, and D. Zeilenga

RETAIN DISCLOSURE COUNSEL

Commissioner Elliot moved to retain the services of Chapman and Cutler LLP as Disclosure Counsel at a blended rate of \$500.00 per hour for all hours worked. Seconded by Commissioner Murphy.

Commissioner Elliot asked Staff Attorney Crowley if the blended rate of \$500 per hour was reasonable, noting his concern that the quoted rate may have been arbitrarily inflated to match the blended rate paid to Jenner & Block regarding the forensic audit report. Staff Attorney Crowley responded that Bond Counsel normally charges a flat fee per issuance, but that the \$500 per hour rate represented a significant discount from Mr. McGree's standard hourly rate.

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Commissioner Elliott asked if Chapman and Cutler provided an estimate of how many hours were anticipated. Staff Attorney Crowley replied that the Chapman and Cutler proposal contained an estimate of 50 – 100 hours for each debt issuance.

Commissioner Zay stated that the Commission needs to get a new set of eyes looking at its debt issuances and, as such, he is not in favor of retaining Chapman and Cutler.

Commissioner Poole asked how much the Commission paid Chapman and Cutler on the \$30 Million Certificate of Debt issuance, and Former Financial Administrator Skiba replied that the Commission paid a flat fee of \$19,500.00.

Commissioner Elliott agreed with Commissioner Zay that the Commission needs to get a new set of eyes looking at its debt issuances, and asked staff how long it would take to obtain proposals. Staff Attorney advised that proposals should be able to be received in time for consideration at the April meeting.

Commissioner Zay moved to amend Commissioner Elliott's motion to add a cap of \$10,000.00. Seconded by Commissioner Maio and approved by a Roll Call Vote:

Ayes: T. Elliott, W. Maio, W. Mueller, W. Murphy, A. Poole, and J. Zay

Nays: G. Mathews and L. Rathje

Absent: T. Bennington, E. Chaplin, L. Hartwig, F. Saverino, and D. Zeilenga

There be no further discussion, Chairman Rathje called for a vote on the amended motion to retain the services of Chapman and Cutler LLP as Disclosure Counsel at a blended rate of \$500.00 per hour for all hours worked, but not-to-exceed \$10,000.00 without further Board authorization. Seconded by Commissioner Murphy and failed by a Roll Call Vote for lack of an approving majority:

Ayes: W. Murphy and L. Rathje

Nays: T. Elliott, W. Maio, G. Mathews, W. Mueller, A. Poole, and J. Zay

Absent: T. Bennington, E. Chaplin, L. Hartwig, F. Saverino, and D. Zeilenga

Commissioner Elliott directed staff to seek proposals for Disclosure Counsel for a recommendation at the April Board meeting, and Commissioner Zay noted that he would email a list of firms that the County of DuPage has worked with in the past.

Before moving on to the next agenda item, Staff Attorney Crowley advised that Public Sector Group, Inc. had indicated it would prefer to have a chance to review and react to the forensic audit report before it was released to the public and that by requiring Freedom of Information Act (FOIA) requests for the audit, the consultants could have five days lead time. Commissioner Elliott disagreed with requiring FOIA requests or

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delaying release of the forensic audit report, and the other Commissioners concurred with Commissioner Elliott.

CHANGE IN CARRIER FOR PUBLIC OFFICIAL BONDS

Acting General Manager McGhee advised that there was nothing new to report on this matter, and Commissioner Zay suggested that Public Sector Group, Inc. might be able to give suggestions for a carrier.

STATUS OF THE \$40,000,000.00 SHORT-TERM FINANCING

Acting General Manager McGhee stated that the bank that staff applied to for the \$40 million loan is waiting for the audit to be released before deciding whether to proceed. Acting General Manager McGhee also stated that the Commission cannot proceed with the Certificate of Debt issuance without a treasurer. Acting General Manager McGhee added that the short term financing would proceed once the audit is released and the continuing disclosure is sent out.

Chairman Rathje asked what the difference was between the short term financing and the continuing disclosure. Staff Attorney Crowley advised that the continuing disclosure is required for Commission's existing bonds but that financial disclosure is also required to be provided to the bank in connection with the Certificate of Debt issuance.

Acting General Manager McGhee asked Former Financial Administrator Skiba to report on the revised budget he is working on, noting that the initial budget was based upon the Commission receiving \$40 million from a new Certificate of Debt issuance.

Former Financial Administrator Skiba stated that because the \$40 million Certificate of Debt issuance may not be completed by April 30th, and because Bond Counsel on the new Certificate of Debt issuance advised that the FYE 2011 budget should meet revenue bond ordinance requirements, the budget was being recast, in addition to a \$2.5 million cut in expenses that Acting General Manager McGhee is recommending.

Commissioner Zay stated that in the past the Commissioners were not given options such as seeing a budget with and without the \$40 million Certificate of Debt issuance, and that options like these should be given to the Commissioners prior to budget adoption. Commissioner Zay also stated that Commissioner Chaplin had asked whether the budget complied with the revenue bond ordinance requirements at the March Committee of the Whole meeting, and he appreciated staff bringing this matter of non-compliance to the Board's attention. Former Financial Administrator Skiba apologized for not seeing it earlier and that if he had been a full-time instead of a part-time employee, then he would have discovered it earlier. Commissioner Zay stated that Former Financial Administrator Skiba did not need to apologize and Commissioner Zay thanked Former Financial Administrator Skiba for doing as much as he has done so far.

Commissioner Elliot echoed Commissioner's Zay's statement, and asked when the Commissioners could have something in writing and if it was possible to have

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something before next meeting. Former Financial Administrator Skiba stated that he would try to get it ready for the next Board meeting.

Commissioner Mathews asked how day to day operations are doing. Acting General Manager McGhee stated that everything is going very well.

Commissioner Zay asked if another hearing was necessary on the budget. Former Financial Administrator Skiba responded that another hearing would not be necessary. Commissioner Zay followed up by stating that if things change and there needs to be another hearing, the Commissioners will need to know about it as soon as possible.

Commissioner Elliott advised that Former Financial Administrator Skiba reported that the finance department is understaffed. In response to Commissioner Elliott's question concerning the status of the new job description for the Financial Administrator, Commissioner Mathews stated that he had received comments from some of the Commissioners but thought that the Board wanted to defer the matter until it is determined how the Commission will be restructured.

Chairman Rathje stated that he had discussed with Commissioner Mathews that the job description should be worked on in a Committee of the Whole. Chairman Rathje added that the recommendations made in the forensic audit report should be reviewed by the Commissioners and the Commissioners should be ready to discuss them at the same Committee of the Whole meeting.

Commissioner Elliott stated that the General Manager, Chief Financial Officer, and Treasurer job descriptions need to be changed, and suggested that instead of the entire Board discussing these job descriptions, the work should be delegated to a couple of Commissioners to write up drafts and then present them to the full Board. Commissioner Maio agreed, and added that he would like to change committee procedures whereby the Chair of a Committee was the person responsible for establishing the Committee's agenda.

Chairman Rathje suggested that Commissioners Maio, Mathews, and Murphy serve on this ad hoc committee to revise the various job descriptions as well as develop suggestions in response to the recommendations made in the forensic audit report. At which point, Commissioner Mathews asked Staff Attorney Crowley whether the ad hoc committee would be subject to the Open Meetings Act. Staff Attorney Crowley advised that given the informal nature of the committee, and so long as no other Commissioners participated, the ad hoc committee should not be considered a public body subject to the Open Meetings Act.

Before moving on to the next agenda item, Commissioner Zay verified with Former Financial Administrator Skiba that cash deposited with the Commission by Commission Customers to pre-pay for certain construction was being used for its intended purposes, and Chairman Rathje asked whether the regular April Board meeting could be changed

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to April 15. It was the consensus of the Commissioners to move the regular April meeting to 7:00 P.M. on April 15th.

EXECUTIVE SESSION

Commissioner Mueller moved to go into Executive Session to discuss pending, probable, or imminent litigation pursuant to 5 ILCS 120/2(c)(11). Seconded by Commissioner Elliott and unanimously approved by a Roll Call Vote.

Ayes: T. Elliott, W. Maio, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Zay, and L. Rathje

Nays: None

Absent: T. Bennington, E. Chaplin, L. Hartwig, F. Saverino, and D. Zeilenga

Commissioner Mathews left the meeting, and the Board went into Executive Session, at 7:55 P.M.

Commissioner Mueller moved to come out of Executive Session at 8:10 P.M. Seconded by Commissioner Poole and unanimously approved by a Voice Vote.

Commissioner Elliott moved to adjourn the meeting at 8:11 P.M. Seconded by Commissioner Zay and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

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