

Thursday, July 9, 2009

Swords still in the air over combination of city offices

By Jo-Ann Jennings

The atmosphere in city council chambers early Monday morning was polite but strained. Chris Camp, representing Cheryl Sasser, former city clerk, put together camera equipment to video-record the session as the councilors arrived for a special city council meeting.

The only item on the agenda for the special meeting at 10:45 a.m., Monday, July 6, was the council's voting on the merging of the duties of the City Clerk's office and the City Treasurer's office. Sasser filed a lawsuit last week against the City of Bixby and against the council for eliminating her job and also that of Janda Williams, asst. city clerk, and Sally Serna, the city manager's assistant. (As this paper went to print, Sasser's hearing was set for 1:30 p.m., Tuesday, July 7. The outcome will be found at bixbybulletin.com when it is received as well as copies of the lawsuit.)

Vice-mayor Dennis Loudermilk was absent, but the remaining council members voted in favor of an ordinance which was presented by City Attorney, Phil Frazier, which would combine the two offices.

Frazier said following the meeting, "This is not a consolidation. The two offices remain. We are simply going to have one office perform the duties of both (City Treasurer and City Clerk). The state statute provides for that as does the city charter. We are simply putting both offices into one." Frazier further indicated his willingness to speak to the media.

Frazier was invited to reply to the comments below given by Camp, and the Bulletin did not hear back from him before deadline time. The Bulletin editor believes this is through no fault of Frazier's as he did not have sufficient time to reply. As soon as he does, his

comments will be posted on bixbybulletin.com and will appear in the July 16 edition of the Bulletin. The Bixby Bulletin wants to go on record as saying every effort will be made to let the people know what both sides of the issue have to say. Please go to bixbybulletin.com to stay up-to-date with this story.

Said Camp, "I want to go on record as saying that I am extraordinarily concerned with the illegal actions of the Bixby City Council today. In purporting to enact the ordinance this morning, the Bixby City Council engaged in numerous violations of the Charter of the City of Bixby, as well as one or more violations of the Oklahoma Open Meeting Act.

"First, the City Council lacks the authority under the Charter to 'combine] the offices and job duties of City Clerk and City Treasurer. Section 2.3 of the Charter expressly prohibits the City Council from "creating], chang[ing], and abolishing. . . [any] offices, departments, and agencies created by this charter." Rather, combination of these two offices, which were both created by the charter, may only be accomplished through an amendment to the Charter following a vote of the citizens of Bixby under Section 9.1 of the Charter. Nothing in the Charter or in the Oklahoma Statutes trumps this prohibition.

"The City Council has tried to get around the prohibition of Section 2.3 — and tried to take, as its own, a power specifically reserved to the citizens of Bixby — by enacting an ordinance calling for the positions of City Clerk and City Treasurer to be consolidated. Under Section 1.4 of the Charter, however, 'no ordinance shall be enacted inconsistent with . . . this charter.' Since the proposed ordinance conflicts with Section 2.3, the Charter prohibits its enactment. Nevertheless, the City Council set this special meeting today to approve the enactment of an ordinance combining the positions of City Clerk and City Treasurer.

"The City Council also violated strict procedural requirements. Under Section 2.13 of the Charter, no ordinance can be enacted unless (1) it is first read, in its entirety, in 2 consecutive, regularly-scheduled council meetings, (2) the gist of the ordinance and the date it will be considered has been published in a newspaper of general circulation not less than 10 days prior to the date of its passage, and (3) the gist of the ordinance and the date it will be considered has been continuously posted in city hall in some place accessible to the public for at least 10 days prior to passage. "The Council did none of these things. Instead, the Council has tried to get around these procedural requirements by invoking the emergency provision of Section 2.14 of the Charter, which, if

followed, would allow the Council to pass emergency ordinances. The Council failed to abide by the required steps set out in Section 2.14. Specifically, under Section 2.14, the Council must first take up a separate motion publically stating the reasons why it is necessary that an emergency exists and why the ordinance must become effective immediately.

“First, the Council did not list the item of whether an emergency should be declared as a separate agenda item on the Agenda for the Special Meeting. The only Agenda item was: ‘Discuss and/or take action on an ordinance combining the office of City Clerk and City Treasurer pursuant to Bixby City Charter Article 8, Section 8.3’
“Therefore, since it was not properly listed on the Agenda, the Council was prohibited from voting on whether an emergency existed. Voting and approving an item not on the agenda constitutes a violation of the Oklahoma Open Meeting Act.

“Secondly, even if the item to declare an emergency had been properly before the Council, the Council failed to state, with any specificity whatsoever, the reasons giving rise to the alleged emergency, as they are required to do by the Charter. Instead, the Council simply voted to approve on John Easton’s motion that an emergency be declared. No explanation at all was given.

“Third and finally, even if the City Council had otherwise followed the requirements of Section 2.14 of the Charter, they still would not be able to get around Section 2.3’s prohibition against enacting ordinances that conflict with the City Charter.

“All actions taken by the City Council today are void under the law. Furthermore, it is my opinion that the City Council’s strategy of providing such short notice of the meeting, and holding it at such an unusual time (10:45 on a Monday morning), reflects an orchestrated attempt by the City Council to fly under the radar in hopes that the public will not realize the Council has illegally exercised powers not belonging to it – powers that are specifically reserved to the citizens of Bixby.”