

SPECIAL CALL CITY COUNCIL MEETING

*Wednesday, April 1, 2020
5:00 p.m.
City Hall, Council Chambers*

ROLL CALL

Present: Mayor Pro Tem Dobson, Council Member Cogdal, Mayor Hark and Council Members Bowen, Welch and Veach – 6

Absent: - 0 -

CALL TO ORDER

There being a quorum present, Mayor Hark called the meeting to order.

JAMES R. HARK - MAYOR

Re: Removal of Board of Public Works Board Members

- *Stephan Franke*
- *Steve Smith*

(Resolution No. 2253-20)

Mayor Hark then turned the meeting over to City Attorney James Lemon to provide a timeline of recent events, relating to the Board of Public Works Board, who had attempted to hire outside counsel to file a temporary restraining order against the “City” to keep from requiring the HBPW to turn off the ammonia and not fine the HBPW as provided for in the Ordinance.

City Attorney Lemon stated on March 24th, he received a phone call from Stephan Franke advising that Interim Director of the Hannibal Board of Public Works, Matt Munzlinger, did not believe the HBPW should cease dosing the water with ammonia, as required by law, and the HBPW was considering not doing this. Lemon felt Franke was calling him, asking his legal opinion, in which Lemon stated he advised he felt that was a “very, very, very, bad idea!” Lemon advised Franke that by not doing so would be a violation of the law and they talked very briefly what the reasons were for that. Lemon’s legal opinion to Franke was to not support the action of Munzlinger unless it had already been specifically authorized by City Council or he at least had reached out to Council Members and received some indicator that they would be willing to take the matter up at the next Council meeting and extend the deadline. Lemon believes Franke reached out to the Council the same day.

On March 25th, Lemon was “cc’d” in on an email from Franke to the City Council that made some comments regarding he had been talking to Council who had stated their concerns. Also on March 25th, the City Manager sent that email to all Council Members and specifically advised for them to not discuss the email, but they could reach out to her with any questions or concerns. Lemon stated he knows Council Member Cogdal reached out to Franke on March 26th, because he has seen the email, but he is not entirely sure of the exact wording. Lemon also knows Mayor Pro Tem Dobson reached out to Franke on the afternoon of March 29th with some concerns expressing

in fairly great detail he would not support waiving any fines to the HBPW for not shutting off the ammonia.

On March 29th at 7:09, Franke emailed Mayor Pro Tem Dobson, also “cc’ing” Lemon, advising that he appreciated his concerns, but the HBPW had decided to continue dosing the water with ammonia. A little later that same day (March 29th) at 8:25, the City Manager informed Franke, by email, that the majority of the Council was not interested in approving an extension of the deadline to cease the use of ammonia. Also, on March 29th, Franke attempted to call Lemon, however, his phone was dead, and he did not receive the call, so Franke then emailed Lemon.

Lemon indicated, on the morning of March 30th, after reading all his emails, he emailed Franke stating very simply “In my legal opinion, you need to shut off the ammonia”. His response to Lemon was “we will be acting in the best interest of the public’s health and safety and there’s nothing we take more seriously than that”. Lemon took that email that Franke had nothing further to state and felt they were choosing to ignore his legal advice.

Lemon then spoke to Council Member Bowen, who had previously contacted him via email, asking what the current situation was. Lemon expressed what he thought the options were, Bowen indicated he was going to request this matter to be put on the regular Council agenda to remove Franke from the Board. At 2:00 p.m. on Monday, March 30th, Lemon emailed Franke again, advising them of the legal consequences of their actions and the fact that he believed Council Member Bowen was going to place an open session item on the next Council agenda, to remove him from the HBPW Board. Lemon also stated he further believed that Interim General Manager Munzlinger was going to be fined every day under the ordinance. At 5:11 p.m., Franke responded, by email, stating “thanks for the advice, it’s truly appreciated”.

On March 31st at 5:17 a.m., Franke sent an email to Lemon, “cc’ing other HBPW board members, Steve Smith and Bill Fischer, requesting what the removal process would be, if, in fact, Council Member Bowen added his removal to the Council agenda. Lemon responded to Franke, later that morning of what the process was, basically what is transpiring today during this special call Council meeting. Lemon also again attempted to explain his legal opinion to all three Board members. Lemon indicated he specifically told them, “he believes there is not sufficient reasons for not shutting off the ammonia. As a result, it is his legal opinion that your actions in directing Interim Manager to ignore the law and the City’s clear directives are a breach of your fiduciary duty”. Lemon received no response from Franke, he did however, receive one from Mr. Smith, in a very hostile manner, who accused the City Council of making decisions solely on politics rather than on the health and safety of the public. Lemon responded by advising Smith of the following facts; no one at this point in time at the water plant or HBPW in general has COVID-19, and following the timeline set out by Munzlinger would potentially put HBPW workers out into a time when they were less able to deal with problems than they could now. If HBPW would go ahead now, workers would have more of an opportunity to deal with “hiccups” then to stall and delay the shut off. Lemon pointed out to the Board that the public would probably see some of this as a stall static. Lemon also pointed out that the staff at the water plant, which has been addressed publically, was ready to go forth with shutting off the ammonia now. The only reason they had not proceeded was because of the direct instruction from Munzlinger to not cease dosing the water with ammonia. Lemon stated he did concede in the email that there were some concerns with customer relations based on the way the Board has decided to not have employees working but he also provided several suggestions such as having some customer service reps work from home, use voice over IP systems, etc. Lemon finally pointed out to the Board Members that a promise was made to the people of Hannibal by the HBPW that the new system would be turned on by a certain date, March 31st. In order for them to live up to the public’s trust, this needed to be done. Lemon advised he received no response to his email. Around 3:00 p.m. that same day, Lemon had a

message from an attorney at a law firm, Jackson & Lewis. This is a law firm that has represented HBPW previously and Lemon believes that they may have a case right now that they are representing HBPW/City in.

Lemon spoke to the lawyer and she expressed that the Board had retained her firm to file a temporary restraining order (TRO) against the City of Hannibal. Lemon was very surprised, and he voiced his concerns, of the following issues:

1. The Board did not have the authority to hire an attorney,
2. The Board certainly would not have the authority to pay an attorney,
3. Such action by the law firm would probably be a violation of their fiduciary duty, since they have an ongoing matter right now with the BPW.

After Lemon explained these issues to the lawyer, she explained she had not been given the entire story, and they would not be going forth with the case and the TRO was not filed. However, Lemon felt he needed to inform the Mayor of what had happened. Lemon explained the problem with this is, the only thing the Board had been informed of was that the City was intending to obey the law with the City Manager planning to issue fines for not obeying the law by turning off the ammonia and there was probably going to be a lawful vote by City Council to decide or not if Franke would be removed from the HBPW Board. The Board's response was the attempt to get a court to order the Council to not obey the law and not to exercise their legal right to remove someone from the Board. Most concerning to Lemon was the fact that the HBPW Board tried to accomplish this without legal authority all while using the City's money. In Lemon's opinion this was a violation of their fiduciary duty and it is something that absolutely entitles the City to remove those Board Members, by law.

As a result of the foregoing Mayor Hark asked Lemon to prepare a Resolution to remove Board members Franke and Smith, which was done and distributed to Council prior to the special call meeting.

The Mayor then asked the City Clerk if she had received any emails from the public relating to the meeting this evening, in which Zerbonia stated she had not received any emails since the meeting began but had received two phone calls prior to the meeting. She stated she advised one caller to submit an email and she would present to the Mayor and she provided the caller with Mayor, Council and her own email addresses. The other phone call was a message from Franke, in which she returned the call, however she received his voice mail. She stated on the voice mail that he was welcome to attend the meeting tonight, advising him the time of the meeting being at 5:00 p.m. and with City Hall being closed to the public, there is a door bell that he would have to ring and someone would allow him in the building. Mayor Hark stated that Franke is not in attendance at tonight's meeting.

Mayor Pro Tem Dobson advised that he was not aware that Franke was able to attend the meeting and he had been contacted by Franke and he advised that he was not allowed to attend. Mayor Pro Tem Dobson did inform Franke that the meeting would be live on YouTube and any questions or concerns could be sent electronically. Mayor Hark questioned the time of Franke's call to Mayor Pro Tem Dobson and to Zerbonia, in which Zerbonia stated she believed her call was around 4:00 p.m. and Mayor Pro Tem Dobson indicated his was prior to. Lemon stated that Franke texted him at 3:11 p.m. inquiring if he could comment, in which Lemon told him he could and to contact City Clerk Zerbonia to request to speak. Franke responded stating he had already spoke to the Clerk's office and had left a message requesting a call back. Mayor Pro Tem stated that Franke was watching the live stream on YouTube and his correspondence with Franke was around 2:40 p.m.

The Mayor thanked City Attorney Lemon for the presentation of the timeline, he believes it to be a fair and accurate representation of the events and discussions thus far.

Mayor Pro Tem Dobson advised he was urged by Franke to call Matt Munzlinger to discuss the technicalities of shutting off the ammonia, in which he did so this afternoon. Upon talking to Munzlinger, he was informed that because of COVID-19, HBPW has cut their staff by half. They are trying to socially distance their staff so that if an outbreak hits, at least they will be “half staffed”. Mayor Pro Dobson wanted to inform Council, according to the local hospital, they have only tested about 60 people, in which he believes only three are positive, none of which are in Marion County as of today. The HBPW is trying to do as much as City Hall is by isolating (closing their building to the public) their employees. In the case the virus does “hit their workplace” at least the HBPW can keep operations going. Munzlinger also stated that the water would be “different” and would have different tastes and smells at times, since it wouldn’t be switched all at once. It may also present as cloudy and may require HBPW crews to go out and flush different neighborhoods, which could result in rupturing lines and causing main breaks. If that were to happen, it would require people to come in and repair the lines, causing crews to intermingle with contractors and the public, risking potential exposure to COVID-19. There are also health care processes that would affect the changeover, one being dialysis as well as other health care providers and nursing homes. Mayor Pro Tem Dobson had an idea, the HBPW crews could test homes from the outside, as the residual chlorine test is an easy test, which requires running your tap water for about five minutes and collecting a sample. Munzlinger stated they are required to take those samples from the actual tap inside the homes of residents, which could possibly expose their employees to COVID-19. Had Mayor Pro Tem Dobson known all of those facts beforehand, his opinion to shut off the ammonia might have been different due to the potential COVID-19 exposure.

Lemon then provided a couple of points regarding Mayor Pro Tem’s statement; one being he addressed all of these issues in his email to the three HBPW Board members and they choose not to respond to anything. Lemon pointed out for instance point five in his email to the HBPW Board, if the issue is concern for water samples being taken at resident’s homes by HBPW employees, that doesn’t need to happen. Lemon stated sample tubes could be provided or dropped off at the HBPW office by residents from their homes, which would limit exposure. Lemon’s frustration was not whether there was a reason to extend the date of shutting off the ammonia, it was the fact that the HBPW Board took it upon themselves to decide to sue the City and stop the Council from taking legal action by using court action and make the City pay for it. This is absolutely a violation of the HBPW Board’s fiduciary duties. Furthermore, in order for the HBPW Board to come to the decision to hire an attorney a meeting had to have taken place. If a meeting had taken place, it should have been posted/publicized, which it was not, and that is an intentional violation of the sunshine law, which could open each Board member up to a \$10,000 fine. This violation could be construed to the City of Hannibal as well. These were also reasons as to why Lemon brought it to the Mayor’s attention. Lemon stated it is no longer about the decision of shutting or not shutting off the ammonia, it’s about the HBPW Board failing to recognize their fiduciary duty and taking actions directly against the interest of the City and violating the sunshine law.

Mayor Pro Tem Dobson questioned Lemon, if in fact the HBPW Board filed the motion, in which Lemon stated they did not because the attorney they had hired, by phone evidently, did not have the proper authority to be retained. Nor did the HBPW Board have the funds to pay the attorney, at their disposal. Lemon stated the only reason the TRO did not get filed was because he made it abundantly clear to the attorney, that in fact the HBPW Board did not have the legal authority and it was a violation of that law firms ethical duty and if/when the TRO was filed the Council could request Lemon to file a bar complaint. Furthermore, Lemon believes the law firm was not

completely informed of the whole situation and when informed they stated they would not proceed as planned. Lemon is unsure if the HBPW Board has consulted with other attorney's and is one of the concerns the Mayor had also. By removing those members from the Board, this would remove all question if they were going to sue or had plans to sue the City, since they would not have any authority to act on behalf of the HBPW. Lemon stated this is not to say they don't have individual rights as tax payers, however, that is not what they tried to do, they tried to sue the City in a TRO as the HBPW and that again is absolutely in violation of their fiduciary duty.

Council Member Welch advised that he received an email on Sunday, which stated the same as what Mayor Pro Tem Dobson stated earlier in regard to why the ammonia wasn't being shut off. In his opinion, he feels that those are legitimate reasons to not to, however, the point of this meeting is the Board did directly do something that we, the Council and City, told them not to. Council Member Welch agrees with the reasons presented tonight, but in his personal opinion, he doesn't think this is a good way, publicly, to remove someone from office and "plant" new people in office. He would rather have seen an opportunity for those board members to resign versus be impeached and he would still like for that to happen.

Lemon then advised that he stated to Franke, before the TRO was filed, in an email, "I see no path to victory here for you, I anticipate that Council Member Bowen is going to put this matter on the floor, and I will have no choice but to inform the Council of things which are a breach of your fiduciary duty and I recommend that you may want to consider resigning". Franke replied back to Lemon that he refuses to resign. Lemon feels these Board members to be friends of his and he tried to give them every opportunity to not violate their fiduciary duty. Lemon, quite frankly, doesn't care whether the ammonia was turned off or not at this point, other than there is an Ordinance in place stating it must be shut off. The Board members are City officials and are bound by that Ordinance, unless they take other action. However, you don't wait until you can't get it on the Council agenda and then show up a week before the ammonia is supposed to be shut off and say "hey, we've decided to not shut the ammonia off". This puts the Council in a bad position, along with the HBPW, especially since they knew they had these concerns, which should have been raised beforehand. Lemon stressed once again, his points to the Board were that at no point did anyone say that the HBPW Board wasn't going to be able to provide safe water to the public. Lemon advised, if that was the issue, they needed to have the Interim Manager Munzlinger say that and he would then take that reasoning to the Council, which did not happen at any point. Lemon's frustration is the Director of the HBPW waited to bring his concerns to his Board after it was too late for Council to get it on an agenda, which then puts the Council in a place where a "snap decision" has to be made, and explain to the citizens the BPW would not have to obey the law which was passed a long time ago. Everyone has known the due date was coming, it didn't just "happen". Lemon also feels the HBPW Board should have responded back to the City Attorney's emails, had discussions with City Council but instead their decision was to instruct the Manager to obstruct the law, that's why Lemon has a big concern.

Council Member Welch asked if the Board had that concern and would have expressed that concern to the Council about the water being unsafe, would the Council have had to call a special call meeting to approve, in which Lemon stated "correct". Council Member Welch then stated, the HBPW did turn off the ammonia by the deadline, in which Lemon stated "correct". The fact that the Council is still going through with impeaching two members of the Board and replacing them when they did turn the ammonia off, is fundamentally wrong in Council Member Welch's opinion and reminds him of the "Good ole boy system" that everyone accuses the Council of having. Lemon clarified that this is not an impeachment, that's something totally separate of what is happening, which would include a trial and proving something was done wrong, but this is not what the Charter reads. The Charter reads: "you may remove by impeachment or upon a Resolution by five votes, that person can be removed". Lemon stated the point is, it's not about

whether the ammonia is off, on or no different, it's the fact the HBPW Board decided they had the power to use the City's money to sue the City. This again is an action against their fiduciary duty and loyalty to this City, in which they violated. This is the reasoning the Mayor had the City Attorney draw up a Resolution, because of them violating a duty of loyalty and holding a secret closed meeting, which is in violation of the sunshine law, which puts the City in further jeopardy. Those are the two issues that the Mayor and City Attorney wanted to be brought to Council's attention and that is what they are voting on tonight, not the ammonia issue. Again, the only reason that the TRO wasn't filed was because HBPW choose an attorney that had a specific conflict with the City. If the HBPW Board had chosen a different attorney or a different law firm, a much different conversation would be happening this evening and we may have been faced with a suit against the "City" by the "City".

Mayor Pro Tem Dobson advised that had he received an email from Franke who advised it was his idea to investigate the attorney and he had conferred individually with the other Board members, and there was no "secret meeting". Mayor Pro Tem Dobson advised he himself has emailed the Mayor and other Council Members before, which isn't a violation and yes, the issue was investigated, however, it was not filed. Lemon then clarified that the information provided by Franke in his earlier email was not correct. Lemon advised the attorney stated specifically that she was retained by the Board of Public Works. Lemon stated that no attorney says they have been retained unless they have actually been retained, this was not an exploration. Lemon also explained that just because the Board Members did not "sit in a room together" for an actual meeting, if a decision was made, the key factor, then it was an invalid meeting and is against the sunshine law. The attorney had already spoken with the judge and that judge wanted to meet with Lemon at 3:00 p.m. that same day. When Lemon indicated that again the Board did not have the authority to retain a lawyer, the attorney advised that she felt the Board members would still proceed forward with the TRO with another firm. The Mayor believes if the Board members are kept in place, the City runs the risk of still being sued in the future.

Mayor Hark's biggest concern, after Council had obviously voiced their opinion that an extension would not likely be given, Council Member Welch interrupted stating his vote was by email, in which Council Member Cogdal then advised that she shared her opinion with the City Manager not Council and it was not a vote. Council Member Welch concurred, he too didn't actually "vote", just gave his opinion to the City Manager. Mayor Hark then stated that if there is an Ordinance in place and Council has not given an extension, he is not placing himself or the other Council Members in the position of violating the Ordinance or giving the "ok" for anyone to do an extension. Therefore, the call had to be made and the ammonia was shut off. Mayor Hark advised that an email was sent, he believes to Mayor Pro Tem Dobson, that stated "you won, we turned it off", which satisfies the legal obligation. Mayor Hark indicated what bothers him the most is that when someone that serves at the pleasure of the Council, that doesn't like the decision that the Council makes by enforcing the Ordinance, they take it upon themselves to turn around and try to get a restraining order against the City. There is the fact that either way would have been the correct answer, leaving the ammonia on or turning it off. He gets the reasoning of not risking personnel; however, he continues to risk personnel with the Police and Fire departments who are still fully staffed and even working overtime. He refuses to believe that essential City service can't be carried out. He has made public announcements about citizens sheltering in place but guaranteed essential City business will be carried out each and every day, which means lights, water and power will be there.

Council Member Cogdal then advised that she received the original email on the 25th, and responded to Matt Munzlinger and included Franke, inadvertently. She also phoned Munzlinger and it was at that time it was her understanding that the City would have a delay in turning off the ammonia. On Sunday she received different information and then spoke with City Manager Peck

and expressed she would prefer to uphold the Ordinance and shut off the ammonia and not give an extension. Council Member Cogdal informed Council she was the one who recommended Stephan Franke and Steve Smith both to the Board and has great respect for them and believes they have done a great job in some troubling times, in which Mayor Hark concurred. She stated this is not about ammonia for her, she is an elected official of the citizens of the third ward, who elected her to make decisions on their best behalf. Council Member Cogdal believes there were two right decisions in this situation, the delay and the shut off both. She does her best to make the best decisions for those that elect her. She does so knowing that she has a staff to carry out what the majority of the vote is and she has to depend on the staff to carry out the decision of the Council and she has to have trust in them. This is probably one of the hardest things she has had to do since being on the Council, but trust is hard to gain but quick to lose. Therefore, she would be in favor of removing both board members.

Mayor Hark then asked City Clerk Zerbonia if she had since received any emails, in which after checking, she stated she had not. He also asked Council Member Cogdal if she or anyone else had received any, in which they had not.

RESOLUTION NO. 2253-20

A RESOLUTION OF THE CITY OF HANNIBAL REMOVING STEPHAN FRANKE AND STEVE SMITH FROM THEIR POSITIONS AS MEMBERS OF THE HANNIBAL BOARD OF PUBLIC WORKS, PURSUANT TO THE PROVISIONS OF SECTION 11.03 OF THE CHARTER OF THE CITY OF HANNIBAL

A motion was made by Council Member Cogdal to have the City Clerk read Resolution No. 2253-20 and call the roll for adoption. The motion was seconded by Mayor Hark.

ROLL CALL TO READ RESOLUTION NO 2253-20:

Yes: Mayor Pro Tem Dobson, Council Member Cogdal, Mayor Hark and Council Member Bowen - 4

No: Council Members Welch and Veach - 2

Absent: - 0 -

Motion carried.

ROLL CALL TO APPROVE AND ADOPT RESOLUTION NO 2253-20:

Yes: Mayor Pro Tem Dobson, Council Member Cogdal, Mayor Hark and Council Members Bowen and Veach - 5

No: Council Member Welch - 1

Absent: - 0 -

Motion carried.

Mayor Hark declared Resolution No. 2253-20 duly approved and adopted on this date.

LISA PECK – CITY MANAGER
Re: Approval of Appointment

City Manager Peck reminded Council of the candidate she presented for recommendation of appointment during the last Council meeting. She is recommending Williams Dees be approved to be appointed to the Hannibal Board of Public Works.

HANNIBAL BOARD OF PUBLIC WORKS

- **William Dees – appointment of an unexpired term to expire July 2020**

A motion was made by Mayor Pro Tem Dobson to appoint William Dees to the Hannibal Board of Public Works for an unexpired term to expire July 2020. The motion was seconded by Council Member Bowen.

Motion carried.

Re: Emergency Recommendation of Appointment

Peck then made an emergency recommendation of appointment to the Hannibal Board of Public Works.

HANNIBAL BOARD OF PUBLIC WORKS

- **John Zerbonia – appointment of an unexpired term to expire July 2023**

Peck advised Zerbonia is a Hannibal native and graduate of Hannibal High School. After graduation, he joined the U.S. Navy and served for 13 years. After his military service he joined the Hannibal Police Department, retiring in 2019 after 20 years of service and attaining the position and rank of Lieutenant Assistant Chief.

During Zerbonia's time at HPD, he has served for numerous years on the Police & Fire Pension Board along with time on the City's Employee Benefit Trust Board, which oversees the City/BPW self-insurance health plan.

Lemon stated upon the reviewing of the Charter, a nomination cannot be approved until seven days after the first presentation to the Council, therefore this nomination will be considered for approval at the next regular Council meeting, to be held April 7, 2020.

CLOSED SESSION
In Accordance with RSMo. 610.021 (3)

At this time, Mayor Hark entertained a motion to go into closed session in accordance with RSMo. 610-021, sub-paragraph (3), hiring, firing, disciplining or promoting of particular employee, admitting himself, City Council Members, City Manager Lisa Peck, City Clerk Angelica Zerbonia, City Attorney James Lemon and John Zerbonia. A motion was made by Mayor Pro Tem Dobson to enter into closed session. The motion was seconded by Council Member Welch.

ROLL CALL

Yes: Mayor Pro Tem Dobson, Council Member Cogdal, Mayor Hark and Council Members Bowen, Welch and Veach – 6

No: - 0 -

Absent: - 0 -

Motion carried.

OPEN SESSION

A motion was made by Mayor Pro Tem Dobson to return to open session. The motion was seconded by Council Member Cogdal.

Motion carried.

ADJOURNMENT

A motion was then made by Mayor Pro Tem Dobson to adjourn the meeting. The motion was seconded by Council Member Veach.

Motion carried.

James R. Hark, Mayor

Angelica N. Zerbonia, MRCC, CMO - City Clerk