

JACKSON CITY COUNCIL

Minutes from
June 20, 2011
7:00 p.m.
Special Session

Jackson City Council met in regular session on Monday, June 20, 2011 at 7:00 p.m. at the Jackson City Council chambers. President Ron Speakman called the meeting to order. The Pledge of Allegiance was given, led by Mr. Speakman. The Prayer was given, led by Mr. Powell.

A roll call was taken as follows:

- ~~Mr. Adams~~ ^{Kitchen} – present
- Mr. Brown – present
- Mr. Elliott – absent
- Mr. Smith – present
- Mr. Fain – present
- Mr. Powell – present
- Mrs. Colby – present

Mr. Brown made a motion to excuse Mr. Elliott, seconded by Mr. Kitchen. In a voice vote, all members agreed.

Mr. Speakman stated the purpose of this meeting was to discuss and act on Ordinance No. 25-11, Ordinance No. 26-11, Resolution 11-11 and Resolution 12-11.

ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 25-11

AN ORDINANCE OF THE LEGISLATIVE AUTHORITY OF THE CITY OF JACKSON, OHIO GRANTING CONSENT TO THE MAYOR TO ENTER INTO AN AGREEMENT WITH DAVIS BROADCASTING MEDIA, INC. FOR THE USE OF CABLE CHANNEL 15 FOR OPERATION OF A LOCAL ORIGINATION CHANNEL FOR THE CITY OF JACKSON AND DECLARING AN EMERGENCY.

Second Reading

Mr. Fain made a motion to suspend the rules, seconded by Mr. Brown. In a roll call vote, Council voted as follows:

- Mr. Kitchen – yes
- Mr. Brown – yes
- Mr. Elliott – absent
- Mr. Smith – yes
- Mr. Fain – yes
- Mr. Powell – yes
- Mrs. Colby – yes

In a roll call vote to adopt the ordinance, Council voted as follows:

- Mr. Kitchen – yes
- Mr. Brown – yes
- Mr. Elliott – absent
- Mr. Smith – yes
- Mr. Fain – yes
- Mr. Powell – yes
- Mrs. Colby – abstain

ORDINANCE NO. 25-11 DULY ADOPTED

ORDINANCE NO. 26-11

AN ORDINANCE OF THE LEGISLATIVE AUTHORITY OF THE CITY OF JACKSON, OHIO TO ACCEPT THE PROPOSAL OF JONE-STEPHENSON INSURANCE FOR PROEPRTY AND CASUALTY INSURANCE COVERAGE FOR THE CITY OF JACKSON AS IT WAS THE LOWEST AND BEST RESPONSIVE PROPOSAL SUBMITTED AND DECLARING AN EMERGENCY.

Second Reading

Mrs. Colby stated this needs discussion, did you read Mr. Kirby's opinion. Mr. Kirby stated if council decides to with clarification, council's discretion. Mrs. Colby stated specifications and advice, Jones-Stephenson did not meet, changed after the fact. Did not qualify. Mr. Kirby stated he included case law in this district. Mrs. Colby stated no harm, there is harm to other bidders, that could be a problem. Mr. Smith asked if any others were allowed to change the price, since we allowing carrier changes. Mr. Kirby stated that could cause a problem. Mr. Smith stated why was he allowed, no different than changing the price. Mayor Heath stated price and carrier are different, both under Cincinnati umbrella. Mr. Kirby stated you would have to ask Cincinnati Insurance. Mayor Heath stated come Friday we will have no insurance. Mrs. Colby read property, second item., firefighters, law enforcement and administration, it did not meet the requirements. The city has set precedence, bids not on time rejected not appropriate. Mr. Powell stated our option is total rebid. Mr. Kirby stated that was reserved. Mr. Powell ask can we get an extension to rebid, wants to be fair. Mrs. Colby had spoke with the committee, we hired a consultant to review our specs, we called them, paid \$5,000, they stated our city does not have proper coverage, this information was not used by Mr. Sheward. Wells Fargo has an impressive bid, we go sometimes with lowest, not always responsible. Mayor Heath stated this is a Dayton agency. Mrs. Colby replied yes. Mr. Brown stated this was brought to our attention by another agent, always had insurance with them, never written up in an audit. Think we are just picking and this is politically motivated. Mr. Fain stated property came from Cincinnati Specialty carrier, still them carrying or was carrier changed? Mr. Kirby stated no finding. Mr. Prichett stated all coverage by admitted carrier, assured its covered. Mr. Fain stated the agent didn't change the bid. Mrs. Colby stated \$97,000 locked in for 3 years, the umbrella is not. Mr. Prichett stated the \$97,000 is locked in, \$2,000,000 umbrella is extra. Mr. Smith stated my intentions are not political, there are questions and concerns with current carrier. I have to wonder why we paid \$144,000 in 2009, \$151,000 in 2010 and now this year \$96,000, that is almost \$54,000 difference, just find it very odd. Wonder why the committee was formed to watch this closely, we saved approximately \$50,000 more contracts, competitive bids, doesn't matter on the location. This is not a witch hunt, not fair to other bidders, do this almost daily, don't understand. Mr. Speakman stated is this a second reading or are we suspending the rules. Mr. Fain requested no vote, set another date. Mr. Kirby ask about time limit.

RESOLUTION NO. 11-11

A RESOLUTION APPROVING THE 2012 JACKSON CITY LIBRARY BUDGET.

Second Reading

Mr. Fain made a motion to suspend the rules, seconded by Mr. Brown. In a roll call vote, Council voted as follows:

Mr. Kitchen – yes
Mr. Brown – yes
Mr. Elliott – absent
Mr. Smith – yes
Mr. Fain – yes
Mr. Powell – yes
Mrs. Colby – yes

In a roll call vote to adopt the resolution, Council voted as follows:

Mr. Kitchen – yes
Mr. Brown – yes
Mr. Elliott – absent
Mr. Smith – yes
Mr. Fain – yes
Mr. Powell – yes
Mrs. Colby – yes

RESOLUTION NO. 11-11 DULY ADOPTED

RESOLUTION NO. 12-11

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF JACKSON TO APPROVE THE REQUEST OF JACKSON R/C ACES TO CONSTRUCT A CONCRETE RUNWAY ON PROPERTY LOCATED ON HAMMERTOWN ROAD AND OWNED BY THE CITY.

Second Reading

Mr. Brown made a motion to suspend the rules, seconded by Mrs. Colby. In a roll call vote, Council voted as follows:

Mr. Kitchen – yes
Mr. Brown – yes
Mr. Elliott – absent
Mr. Smith – yes
Mr. Fain – yes
Mr. Powell – yes
Mrs. Colby – yes

In a roll call vote to adopt the resolution, Council voted as follows:

Mr. Kitchen – yes
Mr. Brown – yes
Mr. Elliott – absent
Mr. Smith – yes
Mr. Fain – yes
Mr. Powell – yes
Mrs. Colby – yes


RESOLUTION NO. 12-11 DULY ADOPTED

Mr. Fain asked if the committee was going to meet? Mrs. Colby stated if not before, defiantly after.

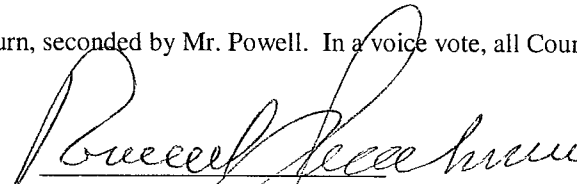
Mr. Fain set a special meeting for Thursday, June 23, 2011 at 7:00 p.m. to discuss and act on Ordinance No. 26-11. Mrs. Colby ask can we choose a different carrier, do we need an ordinance. Mr. Speakman replied yes. Mrs. Colby ask to add another ordinance for different carrier.

ADJOURN

Mr. Fain made a motion to adjourn, seconded by Mr. Powell. In a voice vote, all Council agreed. Council adjourned at 7:25 p.m.



Tera Brown
Clerk
Date 7-11-11



Ron Speakman
Council President
Date 7/11/11

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June 20, 2011

Randy Heath
Mayor of the City of Jackson
145 Broadway Street
Jackson, Ohio 45640

William Sheward
City of Jackson Service Director
145 Broadway Street
Jackson, Ohio 45640

Council Members
Jackson City Council
145 Broadway Street
Jackson, Ohio 45640

Dear Mayor, Service Director Sheward and Jackson City Council Members;

I have been asked to research and give an opinion concerning circumstances surrounding the proposals for insurance submitted and an award of insurance contract for the City of Jackson. A request for proposals was made and three responses were submitted to the City for consideration. I believe it is relevant to note that the advertisement for proposals stated that the City reserved "the right to accept or reject any or all proposals." A recommendation was made by the City's administration to accept the proposal for insurance from Jones-Stephenson Insurance Agency, Inc. as the lowest and best proposal.

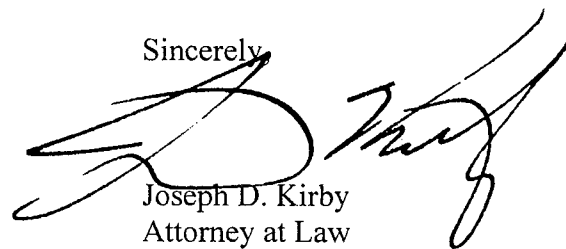
Prior to or at the June 13, 2011 council meeting, Wells Fargo, through its agent, claimed that the proposal from Jones-Stephenson Insurance was not responsive in that one insurance carrier may not have been an admitted carrier pursuant to Ohio Revised Code Chapter 3955. Subsequently, a clarification was made by Jones-Stephenson Insurance Agency stating that all insurance will be written through The Cincinnati

Insurance Company and that The Cincinnati Insurance Company is an admitted carrier in the State of Ohio. I have been asked for an opinion concerning whether the subsequent information provided by Jones-Stephenson Insurance Agency may be relied upon by the City of Jackson in awarding the insurance contract. I make no opinion now on whether the Jones-Stephenson Insurance Agency proposal was or was not responsive nor am I offering an opinion on the validity of Wells Fargo's allegations. I am concentrating solely on the effect of the subsequent clarification submitted to the City by Jones-Stephenson Insurance Agency.

I have reviewed case law from our Fourth Appellant District. The Fourth District Court of Appeals in J.R. Mason Inc, the Village of South Bloomfield 1995 WL 149100 (Ohio App. 4 Dist.) stated that "a municipal corporation does not abuse its discretion by allowing clarifications of a bid given by a bidding contractor after bids are open but before an award is made, (citing Cedar Bay Constr., Inc. v. Freemont (1990), 50 Ohio St.3d 19). The Court in J.R. Mason Inc., supra, went on to state that "a public agency may exercise its discretion by declaring a bid proposal responsive where the irregularity complained of does not provide a bidder an advantage over its competitors", (citing KoKosing Constr. Co. v. Dixon (1991), 72 Ohio App.3d 320). Generally, the exercise of discretion by a legislative body is not disturbed by a court unless there is a finding of abuse of discretion. An abuse of discretion connotes more than an error by council but rather implies an unreasonable, arbitrary or unconscionable attitude on the part of the council.

It is my opinion that accepting the clarification submitted by Jones-Stephenson Insurance Agency, Inc. is a defensible position for the City. The clarification, even made after the opening of proposals, does not appear to have placed any party at an unfair advantage at the time the proposals were submitted. If council decides that this is not supported by the facts, other alternatives include awarding the insurance contract to the next lowest and responsive proposal or to reject all and call for new proposals to be submitted.

Sincerely,

A handwritten signature in black ink, appearing to read "J.D. Kirby", is written over the typed name and title.

Joseph D. Kirby
Attorney at Law

JDK/mh