

MINUTES OF MEETING, ATHENS CITY COUNCIL, FEBRUARY 29, 2016

The Athens City Council met in called session on February 29, 2016, at 5:00 p.m. with Mayor Davis presiding. The invocation was given by Vice Mayor Perkinson; and upon roll call, the following members were present:

Pelley, Raper, Perkinson, Davis

Council Member Burris arrived at 5:04 p.m.

The following decision was made and ordered made a part of the records of the Athens City Council.

The purpose of the meeting, as issued in the "Notice of Called Meeting" dated February 19, 2016, was read and made a part of these minutes:

NOTICE OF CALLED MEETING

There will be a called meeting of the Athens City Council on Monday, February 29, 2016, at 5:00 p.m. in the Athens Municipal Building Burkett L. Witt Council Chambers located at 815 North Jackson Street for the purpose of discussing the sales tax and property tax information sheet mailed to city property tax holders.

/s/

Ann S. Davis, Mayor

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NEW BUSINESS

DISCUSSION ON THE SALES TAX AND PROPERTY TAX INFORMATION SHEET MAILED TO CITY PROPERTY TAX HOLDERS

City Attorney Trew noted he was not present at the City Council meeting where this issue came up the first time. It was his understanding that there was a question raised about the information sheet that was mailed to the city's taxpayers. Since he owns property in the city limits he also received one. City Attorney Trew stated he was first given a copy of the information sheet by City Manager Moore at least a month prior to receiving it in the mail. Mr. Moore had asked him if the document could be mailed using city funds. After review, City Attorney Trew determined the document to be factual. He read the information that was provided to Council from the Office of the Comptroller and read the email communications. After reading the information, his opinion did not change. He stated that city funds could not be used to ask for a yes or no vote on a political issue. City funds could be used to provide education, general information and facts about a particular issue that may be relevant to the city. The issue of sales tax and property tax was certainly relevant. After review, it appeared to City Attorney Trew that it stated facts and did not ask the citizens to vote yes or no on the sales tax referendum. He advised City Manager Moore that what he had looked at would be legal to send.

Mayor Davis stated she received a message earlier in the day from Justin Wilson, Tennessee Comptroller, stating that he would like to speak to her. When she called him back, he told her he had received a copy of a newspaper article that was published in the Daily Post-Athenian pertaining to the information sheet at 11:00 a.m. that morning. The Comptroller stated he was calling her because he wanted the City Council to know he had never made a statement or issued any information on this issue. In the article it stated Larry Eaton had told the Council he had emailed the Comptroller regarding his concerns and the Comptroller had some serious issues with this letter being legal that was sent out to the citizens of Athens, Tennessee. Mayor Davis stated the Comptroller wanted them to know he had never spoken to or had any contact with Mr. Eaton. The Comptroller also wanted them to know that an official statement had not been issued by his office regarding the document. He did speak to Greg Cothron, assistant general counsel in his office, who was also named in the article. Mr. Cothron did confirm that he had been communicating with Council Member Pelley via email and he had referenced a pair of related opinions from the state Attorney General's Office. Mr. Cothron stated that the general standard

was, absent express statutory authority, government funds should not be used to advocate for or oppose a referendum. He was not aware of a statute that explicitly authorized the City of Athens to use city funds to advertise its position for or against the referendum. However, Council Member Pelley would find language in the opinions that a city could use city funds to educate its citizens through factual statements about the referendum.

City Attorney Trew stated he was told the Council wanted to discuss the information sheet and would be happy to answer any questions the Council had with regard to this issue. He reminded the City Council that he had reviewed the information sheet and found it legal. He did not dig into whether it was factual or accurate. He assumed that the information was factually accurate. Council Member Pelley stated that he was the one that called for the meeting. He stated that the information may be factual but he would challenge its accuracy and felt the law was very clear. Council Member Pelley stated he had talked with Mr. Cothron on three or four different occasions and he still submitted that they used public funds to try to advocate for the sales tax whether you were for or against it. Council Member Pelley reviewed each item on the information sheet noting that it was mailed out the weekend before early voting began. He submitted that the City had three primary sources of income. The third source was fines. Over a half a million dollars in fines were raised each year. While it may be a fact that the City had two primary sources of income, it was not accurate. The last increase in the local option sales tax was in 1978. Prior to the 2015 property tax increase, the last increase was in 1996. No one will dispute they were facts and accurate. The City Council had pledged to decrease the property tax rate for the 2016 taxes as an inducement to get people to vote for a sales tax. Council Member Pelley felt that if the city was against the sales tax they would have not have phrased it the same way. The statement the tax increase would not exceed \$12 on any large single item purchase was a fact. Voting yes on the ballot is a vote to increase the local option sales tax rate. He felt this was a fact but questioned its accuracy. The tax increase would provide funds for debt repayment for school consolidation, for school programs and operations, etc. Council Member Pelley questioned if that was all it was going to go for. He felt it was a false statement. It was going to be used for some of that but not all. He stated that if they wanted to put a fact there they should have said all. One statement said the sales tax increase will resume the 55% / 45% split in the local option sales tax for the city and schools but in another statement it stated if the sales tax rate was approved the new revenue would be split 50% / 50%. This was factual but questioned the accuracy when looked at together. Present rates for the surrounding areas were probably accurate and factual. The State of Tennessee receives 7% of the total 9% sales tax collected. This was factual and accurate. A three quarter of one percent (.75) sales tax increase would generate approximately \$3,000,000. Council Member Pelley did not consider this factual. He felt it was an opinion. He also felt the statement that an 83.58 cent property tax increase would generate approximately \$3,000,000 was also an opinion. It was his opinion that taxpayer dollars were spent to get a sales tax approved and that all the statements were factual but not accurate. Council Member Burris stated the only question he had from people in the community was if the Council knew the letter was going to be mailed out and did they vote on the specific letter. Council Member Burris stated he did not recall ever seeing the letter. Mayor Davis reminded Council Member Burris that at joint meetings with the Athens City Schools Board of Education they had discussed different ways they could educate the public on what the sales tax increase meant as far as factual information. They had several requests at the Listening Tour from citizens for information that could be simplified into bullets or snapshot information. The first copy of the letter was placed in the Council mailboxes on January 7, 2016. A copy of that letter also went to City Attorney Trew. After the City Manager received a response from the City Attorney, a copy of the letter was placed in their mailboxes a second time on January 19th. Mayor Davis stated she felt it was their responsibility as council members to ask questions if they received something in their mailbox they did not understand. If they missed a meeting, it was their responsibility to go to City Manager Moore and ask him what they missed and what was discussed. Council Member Burris responded that he did remember that but the question he had from people who had received the letter was if the City Council voted to use the money to send the letter out to the public. Mayor Davis responded that the question was answered at a previous meeting and asked City Manager Moore to respond. City Manager Moore stated there was money in the budget for public relations. Council Member Burris commented that was the only question he had been asked. Council Member Pelley stated this was made available to them on the two dates and he had no problem with it if it was for internal communications. He was following the direction of the assistant general counsel in the Comptroller's office to have the


Council look at the letter and determine whether it was factual and legal. Council Member Pelley commented that he wished his motion would have been to have an independent board look at the letter instead of the City Council. As far as he was concerned, he felt it was factual but inaccurate. Vice Mayor Perkinson stated that he had not heard anything that was not factual and; therefore, he felt what he had read was factual information and educational. Council Member Raper stated this was the exact same sales tax and property tax information that they had been given since the very beginning. At the meeting held at the Middle School, at least a third of the people there asked for this information so that they would have something in hand to read. She did not consider this a letter but considered it a fact sheet. City Attorney Trew commented that he was also at the meeting where he heard at least three people ask for something similar. If City Council had a problem with the way this issue was handled then they should address it with the City Manager. This was not a legal issue. The legal issue had already been addressed. You cannot send out an advertisement with a box that says vote yes for the sales tax or vote no for the sales tax. Council Member Pelley stated per state law the information must be both factual and accurate. No one was disputing the facts. All he was saying that it was not factual and accurate. Mayor Davis asked Mr. Moore if the videotaping was costing the city extra money and if they were paying City Attorney Trew to attend this meeting. City Manager Moore stated they were paying extra to record the Called Meeting. City Attorney Trew responded he was being paid for preparing for the meeting and attending it. Mayor Davis noted there would be a considerable cost for the meeting. **A motion was made by Council Member Raper, seconded by Vice Mayor Perkinson, to find the information on the fact sheet that was mailed out to be factual and accurate and for the City Attorney to send a letter to the Comptroller's office advising them that they had given their approval and the matter was closed.** City Attorney Trew stated that the City Manager is under the purview of the City Council. If the City Council has an issue with what he did they should take it up with him. This was not a legal matter; it is an internal matter that affects the relationship between the Council and City Manager. Council Member Burris asked if they were buying ten shovels for Public Works would it have to be bid out. City Attorney Trew responded that it was based on the level of monies involved. There were a lot of purchases made that were not brought back to the Council. Council Member Pelley rose in opposition to the motion as he addressed it from a legal issue – factual and accurate. As far as he was concerned the information that they mailed out needed to be totally factual and accurate and it wasn't. Upon conclusion of the discussion, the motion was approved by the following roll call vote:

AYES: Burris, Raper, Perkinson, Davis
NAYS: Pelley


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ADJOURNMENT

There being no further business to come before the meeting, the meeting adjourned at 5:37 p.m.



ANN S. DAVIS, Mayor



MITCHELL B. MOORE, City Manager