



January 23, 2013 at 5:00pm
Notice posted

Minutes

**Meeting of the Charter Review Commission
Cuyahoga County
Wednesday, January 23, 2013 at 5:00 P.M.
Cuyahoga County Administration Building, 4th Floor**

Required notices were provided and posted and the meeting was called to order at 5:11 PM by the Chair. The roll was called.

Present: Akers; Tarter; Albright; Russell; Dietrich; Headen; Callahan; Riley

Absent: McLaughlin;

A quorum was present.

Akers called for public comments. There were no public comments.

The minutes for the following meetings were previously distributed to all the members of the CRC:

- January 5, 2013;
- January 9, 2013; and
- January 12, 2013.

Russell moved that the minutes be approved as written. The motion was seconded by Dietrich. A voice vote was taken on the Motion. The Motion was unanimously approved. The minutes have been approved.

Akers introduced County Councilwoman Sunny Simon. Simon began her presentation by noting that there were two main topics that she felt the CRC should

address: the BOR and the delineation of the duties of the County Prosecutor and the County's charter-created Law Director. Simon noted that the previous Prosecuting Attorney was an active participant in the drafting of the charter and maintained the position as a separate, elected position.

Simon stated that the County would be more efficient if the Law Director was the sole legal representative for all aspects of the County's civil matters. She stated that this arrangement would include the handling of all civil litigation. Simon continued by noting that the County Prosecutor would continue to serve as the sole counselor for all criminal matters and prosecutions but that all civil matters should be transferred to the Law Director. Simon felt that this arrangement would allow efficiencies as well as leading to a stronger representation for county agencies and employees. Additionally, she stated that this would eliminate the current situation which encourages duplication of efforts.

Simon also pointed out that allowing the Law Director to handle all the civil matters would allow the county to hire counsel of its own choosing and to employ an open and transparent process to obtain competent counsel. She noted that currently, the County is given a lawyer by the Prosecutor from a list compiled by the Prosecutor. Simon presented examples when the Prosecutor's Office did not act on the legal requests of the client (County Council). She noted that this was unacceptable. She also noted that duplication of efforts and contrary legal opinions have occurred, such as with the BOR operations.

Simon stated that, as a practicing attorney, she was well versed in the reading of the legal opinion issued by Ohio Attorney General DeWine. Having reviewed that decision, she stated that the CRC can amend the County Charter to move the civil work of the county to the Law Director, despite any comments to the contrary. She stated that this position was also consistent with the parameters of the Federal System.

Relative to the BOR, Simon concurred with the position articulated by Miller in that there is one BOR and several "hearing boards". She felt that the party affiliation requirement should be removed from the BOR section of the Charter, stating that the work of the BOR was more technical than political. She also felt that the appointments to the hearing boards were more properly made by the Executive rather than the County Council.

At the conclusion of Simon's presentation, Akers asked for questions from the CRC members. Riley sought clarification regarding her position of the county's

legal representation. Simon re-stated that the Prosecutor's office did not have an obligation to utilize the open and transparent procurement process that all other branches of the County used. Riley asked whether using the County's current procurement process to obtain counsel would be too time consuming in some instances. Simon re-stated that using the procurement process as soon as possible and obtaining a listing of qualified counsel would not cause any delays. Mahklouf agreed and stated that a pre-approved listing of counsel could easily be obtained. He noted that all county contracts with a value greater than \$500 had to go through the same process.

Noting that he had to leave at 5:30, Tarter asked Simon for her thoughts on the hiring of the Clerk of Courts. Simon noted her legal experience and stated that she felt comfortable having the Judges select the Clerk. Tarter also asked about the possibility of having an appointed Prosecutor. Simon stated that she was in favor of this concept but that her position was not so strong that this issue should be on the forefront of this commission's current agenda.

Riley asked for some clarification about the D'Ambrosia case. Simon stated that the matter illuminated some likely conflicts in the representation provided by the Prosecutor's office. She also noted that the Prosecutor's office was now seeking to hire counsel, of its own choosing, to represent the office concerning trial errors that the prosecutor's office committed in the actual trial. At this point, Assistant Prosecuting Attorney David Lambert interjected and asked to be heard by the CRC.

Riley asked for Simon's thoughts on duplication of legal work and what were possible causes. Simon stated that the cause of any duplication of work was a direct result of the lack of clarity in the charter as it relates to the lines of authority between the Prosecutor and the Law Director. Once the clarity was provided, the duplication would likely be eliminated.

The CRC thanked Simon for her time and presentation. Akers asked the Human Resource Commission (HRC) to begin its presentation. The HRC was represented by the three members of the HRC (Robert Wolff, Katherine Palmer and Angela Simmons) as well as the administrator of the HRC, Rebecca Kopcienski. The HRC provided background of the work that it performs as well as the applicable provisions in the Charter. Kopcienski noted that the Prosecutor's office had rendered an opinion about the scope of the HRC's representation. The HRC issued a handout with information about the work performed and the authority of the HRC. A copy of this document is attached and incorporated herein.

Akers noted that prior to the passage of the Charter, each county office had its own, separate Human Resources Department. It was envisioned that there would be one department that would deal with all the HR needs of the county workforce. This would necessarily lead to efficiencies and savings. Additionally, there would be consistent assessment of the performance of the workforce and a merit-based policy for advancement and pay ratings. Akers and Riley requested that the HRC present any specific recommendations to the CRC as soon as possible.

Akers thanked the HRC for their time and energy. Next, Akers welcomed retired judge Richard Markus. Markus provided the CRC with his background and judicial experience. He appeared to speak about the hiring of the Clerk of Courts. He noted that he had been involved with the Clerk of Courts, in one form or another, for more than five decades.

Markus noted that the proposal presented by the Judges did not include all of the county's courts, including the numerous municipal courts as well as the Probate Court. He noted that even the process that the respective courts used to select its presiding judges varied. The Court of Appeals rotated its presiding judge on an annual basis, while the Common Pleas and Domestic Relations Courts elected its presiding judge.

Markus stated that there is a misconception that the Clerk works for the Courts itself. Markus stated that the Clerk performs numerous other tasks, including title work, notary public, bail bonds and other non-court matters. If the judges selected the Clerk of Courts, it would be the only county court in the state that was so structured. Markus referred to the Ohio Constitution and noted that specific language was included to address how the Probate Courts select their Clerk. The Ohio Revised Code also provided specific language to address how the Juvenile Courts select their Clerks. However, the Ohio legislature has specifically not given the power of Clerk appointment to the Judges.

When asked why Ohio had not given this power to the judiciary, Markus noted that there was no clear answer. However, he noted that judges have extremely difficult and time consuming work. The courts do not usually have the time or experience to address such mundane personnel matters such as hiring a clerk. Additionally, hiring anyone, by a committee of judges is not an effective administrative process.

Relative to the perceived lack of independence, Markus noted that the Clerk's Office was "where the public's records were kept" not the place where "the Court

stores its records”. He stated that the Courts would be better served administering to its judicial tasks than diving into administrative matters such as hiring, staffing and administering to a large office. He also stated that having the Clerk’s Office under the Court’s jurisdiction was not consistent with the mandate of the Charter.

Akers thanked Markus for his informative presentation and introduced County Councilman Michael Gallagher. Akers provided background on Gallagher and noted his extensive work in the court system. Gallagher stated that he was only appearing to address one issue: the hiring of the Clerk of Courts.

Gallagher stated that he was disturbed by the Courts’ attempt to take over the Clerk’s Office. He noted that the Clerk’s office has not been well maintained for years and is nowhere near where it should be. He stated that its use of modern technology was woeful and its hiring and performance assessments were not up to the standards of other county offices. Gallagher noted that progress has occurred, rapidly, since Gerald Fuerst retired. He noted that Fuerst was in office for over three decades and change was long overdue.

Gallagher stated that a branch office of the Clerk’s Office was being set up in the Old County Court House to address issues raised by the Court of Appeals. He noted that the interim Clerk led the drive to open that branch office. He also noted that more than \$100,000 in unpaid court costs had been collected since the interim clerk has been on the job. Gallagher also noted that the judges have really been late to jump on the re-structuring band wagon. He noted that Nancy Fuerst and Gerald Fuerst are related and there was no record of any judicial calls for taking over the Clerk’s office until recently. The issues that need to be addressed have been present for years, if not decades, without any cry of concern from the courts.

Gallagher also pointed to his almost thirty years of work in the judicial system. He noted that the judiciary has not been known for its open and transparent processes. Gallagher noted that the issue was very important and personal to him, as his sister serves as an Appellate Judge and his grandmother worked in the courts for years. Gallagher was adamant that the interim Clerk of Courts is off to a great start and providing long overdue leadership on innovations. He asked the CRC to allow the Charter to remain unchanged on the issue of appointing the Clerk of Courts.

There being no further business before the CRC, **Russell** made a motion to adjourn. The motion was seconded by **Albright**. The motion was unanimously approved by a voice vote of the CRC members.

Draft _____

Issue _____

App. 2/23

Posted 3/4