



City of Grand Island

Tuesday, February 12, 2013

Council Session

Item I9

#2013-46 - Consideration of Authority of the Police Pension Committee

Staff Contact: Robert J. Sivick, City Attorney

Council Agenda Memo

From: Robert J. Sivick, City Attorney
Meeting: February 12, 2013
Subject: Authority of the Police Pension Committee
Item #'s: I-9
Presenter(s): Robert J. Sivick, City Attorney

Background

In 1983 the Nebraska Legislature passed LB237 which contained the Police Officers Retirement Act (Act), codified in Article 10(a) of Chapter 16, §§16-1001 - 1019 of the Nebraska Revised Statutes. The Act and the resulting statutes addressed issues regarding pensions for police officers employed by First Class Cities.

Nebraska Revised Statutes §16-1014 states in part,

A retirement committee shall be established to supervise the general operation of the retirement system established pursuant to the Police Officers Retirement Act. The governing body of the city shall continue to be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee. Whenever duties or powers are vested in the city or the retirement committee under such sections or whenever such sections fail to specifically allocate the duties or powers of administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee.

A search of City records indicates the Grand Island City Council (Council) as the governing body of the City of Grand Island (City) never delegated any authority pursuant to §16-1014 to the Police Pension Committee.

On January 17, 2013 and February 5, 2013 the Council approved Resolutions 2013-17(A) and 2013-26(B) respectively. Those ordinances set forth directives from the Council that police pension benefits be determined using a straight life annuity calculated on a basis specific to the gender and age of the retiree.

During meetings of the Police Pension Committee (Committee) held on January 24 and February 8, 2013, certain members of the Committee expressed the belief they were not

bound by the directives contained in Resolutions 2013-17(A) and 2013-26(B). In addition, at the meeting held on February 8, 2013 the Committee approved a Motion to retain alternative legal counsel.

Discussion

The Police Pension Committee's authority is limited to ministerial duties set forth in Neb. Rev. Stat. §16-1017. Any additional authority must be delegated by the Council. Most importantly, the Committee is subordinate to the authority of the Council as the governing body of the City. Statements and actions made at recent meetings of the Committee necessitate the Council specifically setting forth the authority of the Police Pension Committee. Resolution 2013-46 affords the Council the opportunity to do so.

Alternatives

It appears the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve.
2. Refer the issue to a Committee.
3. Postpone the issue to future date.
4. Take no action on the issue.

Recommendation

The City Administration recommends the approval of Resolution 2013-46.

Sample Motion

Move to approve Resolution 2013-46.

RESOLUTION 2013-46

WHEREAS, Article 10 of Chapter 16 of the Nebraska Revised Statutes sets forth the laws governing the pensions of police officers of First Class Cities; and

WHEREAS, Section 16-1014 of the Nebraska Revised Statutes states in part, *A retirement committee shall be established to supervise the general operation of the retirement system established pursuant to sections 16-1001 to 16-1019. The governing body of the city shall continue to be responsible for the general administration of such retirement system unless specific functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee. Whenever duties or powers are vested in the city or the retirement committee under such sections or whenever such sections fail to specifically allocate the duties or powers of administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee.*; and

WHEREAS, Section 16-1017 of the Nebraska Revised Statutes sets forth specific ministerial duties of the Grand Island Police Pension Committee confined to providing information and reports to participants in the Grand Island Police Retirement System and certain governmental officials of the State of Nebraska; and

WHEREAS, the Grand Island City Council as the governing body of the City of Grand Island has never delegated any authority to the Police Pension Committee beyond that set forth in Section 16-1017 of the Nebraska Revised Statutes; and

WHEREAS, the authority of the Police Pension Committee is subordinate to the authority of the City Council; and

WHEREAS, the members of the Police Pension Committee are obligated by law and specifically Section 16-1014 of the Nebraska Revised Statutes to implement, adhere to, and obey the policies and directives of the City Council in the administration of the City's Police Retirement System; and

WHEREAS, on January 17, 2013 the City Council approved Resolution 2013-17(A) setting forth the directive to the Police Pension Committee that police pension benefits be calculated on a straight life annuity basis; and

WHEREAS, on February 5, 2013 the City Council approved Resolution 2013-26(B) setting forth the directive to the Police Pension Committee that police pension benefits be determined using a straight life annuity calculated on a basis specific to the gender and age of the retiree; and

WHEREAS, during meetings of the Police Pension Committee held on January 24, 2013 and February 8, 2013 certain members of that Committee expressed their belief the Committee was not bound by the directives of the City Council as set forth in Resolutions 2013-17(A) and 2013-26(B); and

WHEREAS, during the meeting of the Police Pension Committee held on

Approved as to Form	□ _____
February 8, 2013	□ City Attorney

February 8, 2013 the Committee approved the retention of outside legal counsel; and

WHEREAS, the Grand Island City Attorney has been appointed by the Mayor and approved by the City Council pursuant to Section 16-308 of the Nebraska Revised Statutes and Section 2-30 of the Grand Island City Code; and

WHEREAS, the City Attorney serves as the legal counsel for the City and all City officers pursuant to Section 16-319 of the Nebraska Revised Statutes and Section 2-40 of the Grand Island City Code; and

WHEREAS, pursuant to Section 2-40 of the Grand Island City Code, the City Attorney is authorized to retain outside counsel in the event he lacks expertise or has a conflict of interest in a matter; and

WHEREAS, the City Attorney has not expressed a belief he lacks expertise or has a conflict of interest which would impair his ability to serve as legal counsel for the Police Pension Committee,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA,

That the Grand Island City Attorney has, does, and shall continue to serve as legal counsel for the Police Pension Committee.

That the Police Pension Committee is not authorized to retain legal counsel or other professional experts, enter into contracts, expend funds, or assume authority not specifically stated in Section 16-1017 of the Nebraska Revised Statutes nor specifically delegated to it by an Ordinance approved by the City Council pursuant to Section 16-1014 of the Nebraska Revised Statutes.

That any contracts entered into by the Police Pension Committee either by individual members or the Committee as a whole, without the prior approval of the City Council, are null and void and will not be recognized or honored by the City of Grand Island.

Adopted by the City Council of the City of Grand Island, Nebraska, February 12, 2013.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk