

BAY COUNTY ELECTION COMMISSION
AUGUST 16, 2000

THE BAY COUNTY ELECTION COMMISSION MET FOR A CLARITY HEARING ON WEDNESDAY, AUGUST 16, 2000, IN THE CONFERENCE ROOM ON THE FOURTH FLOOR OF THE BAY COUNTY BUILDING. THE MEETING WAS CALLED TO ORDER BY CHAIRMAN KAREN A. TIGHE AT 4:30 P.M. WITH THE FOLLOWING MEMBERS AND GUESTS PRESENT.

ROLL CALL: COUNTY TREASURER JEANETTE E. NEITZEL
COUNTY CLERK LINDA L. TOBER
PROBATE COURT JUDGE KAREN A. TIGHE, CHAIRMAN

ALSO PRESENT: LORAINA A. ROSECRANS, SECRETARY TO THE COUNTY CLERK
THURMAN T. ELSWICK, PETITIONER
MARTY MURPHY, CITY OF BAY CITY RESIDENT
VIRGINIA HUTTER, CITY OF BAY CITY RESIDENT
MARY WALRAVEN, CITY OF BAY CITY RESIDENT
COLIN HINTZ, 2ND WARD CITY COMMISSIONER
MARY BLEAU, 4TH WARD CITY COMMISSIONER
JAMES M. HAMMOND, ATTORNEY FOR MARY BLEAU
OTHER INTERESTED PARTIES

CHAIRMAN TIGHE ANNOUNCED THAT THIS MEETING WAS IN REGARD TO A PROPOSED RECALL PETITION SUBMITTED BY THURMAN TIMOTHY ELSWICK DATED JULY 26, 2000, AGAINST 4TH WARD CITY COMMISSIONER MARY BLEAU. THE CHAIRMAN EXPLAINED TO MS. BLEAU'S ATTORNEY, JAMES HAMMOND, THAT THE COMMISSION USUALLY FIRST OFFERS THE PETITIONER THE OPPORTUNITY TO STATE WHY THE RECALL PETITION LANGUAGE SHOULD BE APPROVED.

ATTORNEY HAMMOND STATED THAT IT WAS HIS UNDERSTANDING THAT THESE PROCEEDINGS WERE LIMITED TO THE ELECTION COMMISSION MAKING A REVIEW OF THE RECALL PETITION ITSELF TO DETERMINE WHETHER THE LANGUAGE IS OF SUFFICIENT CLARITY TO INFORM THE ELECTED OFFICIAL OF THE CONDUCT TO BE ADDRESSED AND THAT THERE IS NO REASON TO PRESENT TESTIMONY. THE CHAIRMAN CONFIRMED THAT UNDERSTANDING AND STATED THAT THE ELECTION COMMISSION DOES NOT INQUIRE INTO THE TRUTH OF THE MATTER.

MR. ELSWICK REVIEWED THE PETITION LANGUAGE. THE FIRST ALLEGATION WAS THAT MARY BLEAU ASSISTED IN VIOLATING THE OPEN MEETINGS ACT BY ENCOURAGING COMMISSIONER LEGNER TO TAKE THE MICROPHONE AWAY FROM MARTY MURPHY ON JULY 10, THEREFORE NOT ALLOWING MR. MURPHY TO SPEAK. MR. ELSWICK NOTED THAT COMM. BLEAU HAD BEEN HEARD MAKING A COMMENT TO COMM. LEGNER TO REMOVE THE MICROPHONE. THE SECOND ALLEGATION WAS THAT MS. BLEAU VOTED AGAINST THE BEST INTERESTS OF THE 4TH WARD BY

APPROVING A BUDGET WHICH INCREASED TAXES/FEE'S BY A 5-4 VOTE ON JUNE 19. THE THIRD ALLEGATION WAS THAT SHE VOTED BY A 5-4 VOTE ON JUNE 19 TO CHANGE TRASH REVENUES FROM A TAX BASIS TO A FEE BASIS WITHOUT KNOWING HOW THE TRASH FEES WERE GOING TO BE COLLECTED. MR. ELSWICK EXPLAINED THAT COMMISSIONERS VOTED ON AUGUST 14 TO SET THE MANNER IN WHICH TO COLLECT THE TRASH FEES; THEREFORE, MS. BLEAU VOTED ON JUNE 19 TO CHANGE FEE COLLECTION WITHOUT KNOWING HOW IT WOULD CHANGE. FURTHER, THE CHANGE INCREASED TRASH COSTS FOR RESIDENTS OF THE 4TH WARD. ALL ACTIONS TOOK PLACE AT CITY COMMISSION MEETINGS.

COUNTY CLERK TOBER EXPLAINED FOR MR. HAMMOND THAT THIS PETITION NEEDS TO BE SIGNED BY THE PETITIONER SO THAT SHE KNOWS WHO FILED IT AND WHAT THE PETITIONER'S ADDRESS IS. THE PETITION WOULD BE CIRCULATED FOR SIGNATURES AFTER APPROVAL OF THE LANGUAGE.

MR. HAMMOND RESPONDED TO THE FIRST ALLEGATION THAT THE PETITION ITSELF STATES THAT ALL ACTIONS OCCURRED AT CITY COMMISSION MEETINGS; THEREFORE, THERE CANNOT BE A VIOLATION OF THE OPEN MEETINGS ACT, SINCE ALL ACTIONS OCCURED DURING OPEN MEETINGS. ALSO, THERE ARE NO ALLEGATIONS OF VIOLATIONS OF THE NOTICE REQUIREMENTS OF THE OPEN MEETINGS ACT. FURTHER, RULES FOR SPEAKING ARE ESTABLISHED BY THE PUBLIC BODY. THE PETITION DOES NOT STATE WHICH CITY RULE WAS VIOLATED BY NOT ALLOWING MR. MURPHY TO SPEAK.

MR. HAMMOND POINTED TO VARIOUS PIECES OF MISSING DETAILS IN THE SECOND ALLEGATIONS, SOME OF WHICH WERE: HOW DID IT GO AGAINST THE BEST INTERESTS OF THE 4TH WARD? DID MS. BLEAU VOTE FOR OR AGAINST THE INCREASE? WHAT DOES "AGAINST THE BEST INTERESTS" MEAN? WHICH TAXES OR FEES WERE INCREASED?

ALSO, MR. HAMMOND POINTED TO MISSING INFORMATION IN THE THIRD ALLEGATION: DID MS. BLEAU VOTE FOR OR AGAINST THE CHANGE? WHAT DOES "VOTED FOR A 5-4 VOTE" MEAN? DOES THE CITY IN FACT HAVE "TRASH FEES"?

MR. HAMMOND SUGGESTED TO THE COMMISSION THAT THIS PETITION IS FATALLY DEFECTIVE BECAUSE MS. BLEAU DOES NOT KNOW FROM READING THE PETITION WHAT CONDUCT IS TO BE ADDRESSED. THE PETITION RAISES MORE QUESTIONS THAN IT ANSWERS. ON BEHALF OF MS. BLEAU, MR. HAMMOND ASKED THE COMMISSION TO FIND THE PETITION DEFECTIVE FOR LACK OF CLARITY BASED ON THE ABOVE REASONS.

COUNTY TREASURER NEITZEL STATED THAT CLARITY IS THE OBJECT IN A RECALL PETITION. THE FIRST ALLEGATION LEAVES OUT MANY DETAILS, SUCH AS WHAT MR. MURPHY WAS DISCUSSING, AND, THEREFORE, DOES NOT MEET THE CLARITY REQUIREMENT.

CHAIRMAN TIGHE INVITED OTHERS IN ATTENDANCE TO SPEAK.

MARTY MURPHY OF 815 NORH VanBUREN STREET WAS AT THE JULY 10 CITY COMMISSION MEETING AND WAS SPEAKING. THE MAYOR ASKED THE CHIEF OF POLICE TO REMOVE HIM FROM THE PODIUM. MS. TOBER ASKED WHETHER THERE HAD BEEN A TIME LIMIT FOR HIM TO SPEAK. MR. MURPHY RESPONDED THAT THERE WAS A FIVE-MINUTE TIME LIMIT, BUT HE HAD ONLY BEEN SPEAKING FOR 2½ MINUTES. IN ANSWER TO A QUESTION BY THE CHAIRMAN, MR. MURPHY STATED THAT THE MAYOR HAD ASKED HIM TO SIT DOWN, WHICH HE REFUSED TO DO BECAUSE HE HAD A RIGHT TO SPEAK.

CITY RESIDENT VIRGINIA HUTTER COMMENTED THAT, AS A TAXPAYER AND VOTER, THE PETITION WAS VERY CONFUSING. SHE STATED THAT A RECALL PETITION SHOULD BE UNDERSTOOD WITHOUT ANY ADDITIONAL INFORMATION FROM THE PETITIONER, AND THIS ONE IS NOT EASILY UNDERSTOOD.

CITY RESIDENT MARY WALRAVEN QUESTIONED HOW MANY TIMES MR. ELSWICK COULD COME BACK WITH RECALL PETITIONS IF THIS ONE IS REJECTED. THE COUNTY CLERK STATED THAT THERE IS NO LIMIT.

COUNTY CLERK TOBER STATED THAT MR. ELSWICK WAS INFORMED AT THE LAST ELECTION COMMISSION MEETING THAT THE ALLEGATIONS ON THE PETITION HAD TO BE VERY SPECIFIC SO THAT MARY BLEAU COULD IDENTIFY THEM AND PROVIDE AN ANSWER TO THE ALLEGATIONS ON THE BALLOT. MS. TOBER STATED THAT TAKING THE MICROPHONE AWAY FROM SOMEONE IS NOT A VIOLATION OF THE OPEN MEETINGS ACT. MS. TOBER DID NOT UNDERSTAND THE PHRASE "MOST OF THE 4TH WARD." HOW DOES IT ONLY AFFECT ONLY PART OF THE 4TH WARD? LASTLY, MS. TOBER POINTED OUT THAT MR. ELSWICK DOES NOT STATE IN WHICH YEAR THESE ALLEGATIONS TOOK PLACE.

CHAIRMAN TIGHE STATED THAT THE WORDING ON THE PETITION NEEDS TO BE CLEAR, CONCISE, AND SPECIFIC, YET SHORT. LANGUAGE WHICH HAS BEEN APPROVED IN THE PAST WAS QUITE SHORT AND VERY SPECIFIC AND CONCISE.

COUNTY TREASURER NEITZEL MOVED THAT THE PETITION TO RECALL CITY COMMISSIONER MARY BLEAU BE REJECTED AT THIS TIME FOR LACK OF CLARITY. IT WAS SUPPORTED BY COUNTY CLERK TOBER AND PASSED BY VOICE VOTE, 3 YEAS, 0 NAYS.

THE ELECTION COMMISSION MEETING WAS ADJOURNED AT 4:50 P.M.

RESPECTFULLY SUBMITTED,

LINDA L. TOBER
BAY COUNTY CLERK