

PENSION BOARD MTG 10-20-06 TRANSCRIPT

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Ed Zuercher ...reappointment of a retiree we're going to have Chief Harris join us (inaudible)...do we need executive session for this?...(inaudible)

Attorney Prepared a memo...(inaudible)...might want to share that with the rest of the board or not.

Ed Zuercher Why don't we do that? Why don't we have, call for an executive session on item number 10.

Ron Snodgrass I call for executive session.

Ed Zuercher (inaudible)...motion for a second. All in favor say "aye."

MBRs Aye

Ed Zuercher Opposed none (inaudible)

Attorney By the way, this memo which was shared with you in executive session is generic. It would be up to you whether you want to share it with the public or not.

Ed Zuercher I don't have a problem sharing it with anybody else. Anybody else?

Ron Snodgrass No.

Ed Zuercher Chief, welcome....(inaudible)...Chief Pinacle how are you?

Chief Pinacle Good. Good. Sit over here is OK?

Ed Zuercher Fine.

Chief Pinacle Thank you.

Ed Zuercher We have before us an item: consideration of possible reemployment of retiree. We've received advice from our attorney about our obligation as a board from the fund manager of the state and that obligation as I understand it, well maybe I'll ask our attorney to tell what our just what our obligation on the board is.

1 Attorney If I understand what's going to be discussed with the board today is the
2 potential reemployment of an individual that is otherwise going to retire from
3 the Phoenix Police Department and the impact of ARS 38-49 sub Attorney on
4 that employment. I suggested to the board that their, they have an obligation
5 to look at those circumstances and try to make a determination based on
6 concrete facts as to whether that would cause a pension, otherwise payable to
7 be suspended to that individual. I've summarized I think generally what I think
8 your obligation to the board are.

9
10 Ed Zuercher Chief Harris, you had asked to come and talk to us about your particular
11 circumstance.

12
13 Ron Snodgrass Shouldn't we lay the foundation why this is on the agenda to begin with? It's
14 not here because of, Jack this is here, Chief Harris this is here because the
15 change of the law this year. We wanted the definition explained to us. That's
16 why we're really here but then members have some issues, you've got some
17 other issues regarding the same thing. I'm sorry.

18
19 HARRIS This is little more of a hypothetical situation because it is a likely proposal to me
20 from city management. I as you know am currently police chief in Phoenix I've
21 been here for 35 years and I'm currently in the DROP program and will be
22 retiring effective January 19. The offer that I had been given is that **they would**
23 **like me to continue employment with the City of Phoenix but in a different**
24 **classification.** So what the proposal is, in essence, is I would retire just as
25 anyone else normally would out of completely out of DROP and out of the state
26 retirement system effective January 19. After a short break in service looking at
27 one or two weeks **I would be reemployed by the city as a deputy city manager.**
28 Of course I would continue to stay out of the retirement system I would be in a
29 system within the City of Phoenix or **civilian personnel.** The deputy city
30 manager position would encompass some different job duties than what I
31 currently have as the police chief. I would be asked to take over the emergency
32 management department which is a separate department just like police is a
33 department, fire is a department, water is a department, emergency
34 management is also a department. I would now have full responsibility for
35 emergency management. I would also have responsibility for homeland security
36 for the City of Phoenix. I would have responsibility for the emergency
37 operations center for the city which is the center that is brought up in any kind
38 of emergency. There would be other job duties that all deputy managers
39 receive. I can't tell you exactly what they would be because they're, as they
40 come up, the city manager, like, it wouldn't be this one but for example, this
41 race that they're talking about putting on in downtown Phoenix would be a

1 special project. If something like that comes up, it gets handed of to a deputy
2 manager. So any special job duties that came up that the city manager felt was
3 appropriate those would also be handed to me on an interim basis. There
4 would also be a completely different salary structure than what I'm in now. I
5 would go under the deputy manager salary structure. **So there would be a**
6 **complete separation from the City of Phoenix and then I would come back in**
7 **this other permanent position.** That position, the part that I believe would
8 cause an issue for this board is **one of those job duties would be to continue as**
9 **the police chief.** They are not interested in going out and rehiring another
10 police chief at this time so in addition to all of those new duties as a deputy city
11 manager, **one of the job duties would be to continue on as police chief.** Now
12 the only other thing that would probably be a question to the board would
13 obviously for any police chief if you add all this other stuff on to my day where
14 are the hours coming from to take on all of the additional responsibilities? And
15 what would happen is more of the daily operations of the police department
16 would be handed off to the executive officer who's the number two in
17 command for the police department. So many of the daily operations that I'm
18 in charge of now would be overseen by the executive officer. **But I would want**
19 **to make it clear that I don't want anybody to have any misconceptions I would**
20 **still be the police chief in as sworn for this thing as I am today.** The only other
21 thing that I would add is that there even though it is a little different because of
22 the current law, the, there is some precedence for other police chiefs who have
23 retired and come back as the police chief. Harold Hurtt, who I replaced, retired
24 after 25 or 26 years with the City of Phoenix, became police chief in California.
25 He was over there for a few years when he was rehired as police chief here and
26 came back and did another 5 years in a separate retirement system. So what
27 I'm talking about, Dennis Garrett, prior to that, had to retire and came back on a
28 private contract for a year or so I believe. And of course I could retire and go be
29 a police chief I think anywhere else in the state but they chose to hire me and I
30 retired out of the system and wouldn't be a deputy manager I would come back
31 as, Tempe is looking for a chief (inaudible) became police chief if I didn't think
32 there was any conflict with the board there it's only with the City of Phoenix. So
33 that is what is being proposed and what I would like the board to consider: is
34 that appropriate and would that be able to occur without the loss of my
35 retirement during whatever time I chose to stay on with the city?

36
37 Ed Zuercher Chief, I've got just one question. The emergency operations center, how many
38 departments work in the emergency operations center – when you're in charge
39 of that?

40
41 HARRIS It would be approximately maybe 26.

1
2 Ed Zuercher Would that include taking command of something of all 26 other departments
3 that would be part of the assignment of the deputy position?
4
5 HARRIS Actually, part of emergency operations emergency management and homeland
6 security involves not just the operation of the emergency center but preparing
7 for the operations emergency center sort of trailing for all other department
8 heads. As you may or may not know if there was heaven forbid a 911 situation
9 or even we had in the 100 year floods we open up the emergency operations
10 center the department heads respond to the emergency operations center,
11 somebody is in charge of that center and runs the operation and that would be
12 part of my..
13
14 Ed Zuercher (inaudible) today?
15
16 HARRIS No.
17
18 WENDY I have a couple of questions. One is, you said that the day to day activities will
19 be handed down to the executive officer
20
21 HARRIS Not all of them
22
23 WENDY That's right.
24
25 HARRIS More than (inaudible)
26
27 WENDY But what does that person do now and does that person have you know an
28 ample responsibility today and how is that person to handle the additional
29 responsibility?
30
31 HARRIS The executive officer has responsibility for day to day operations while I'm not
32 here. So currently he does do that if I'm out of town, or at a conference, or
33 vacation, you know, that type of thing. It would basically, to answer your
34 question, is that it would continue to go downward we have seven assistant
35 chiefs that would all take on a little bit more of his responsibility so that he
36 could handle more day to day operations.
37
38 WENDY I know one of the things that's floating in my head is that at some point if you
39 decide to retire does the police chief then go back to being a police department
40 employee or a deputy city manager employee because then...
41

1 Ed Zuercher That depends on what the city manager thinks.
2
3 WENDY Right.
4
5 Ed Zuercher At the time that it happened.
6
7 WENDY Right. But I think that you're really setting a new precedence with this because
8 you're actually opening up a door for that person to be hired in two different
9 venues essentially and so I think that needs to be discussed a little bit further. I
10 would think.
11
12 HARRIS That or course is as Ed said would be the call of the city manager at the time
13 that I chose to retire they said well that was a bad idea or they said that was a
14 great idea the city manager could make the decision that if they decided that it
15 was going to return to what it is today, I am a police chief, what I am today is a
16 department head. The police chief the police chief is the department head and
17 I'm in charge of one department. If, we think that logically emergency
18 management, emergency operations center, homeland security is kind of a
19 police role anyway. Right now those things report to a separate deputy city
20 manager that may or may not have any experience in law enforcement or
21 police. So I if I could speak for the city manager I would say that he probably
22 feels that this is a logical fit. However, if I chose to retire in a year or two or
23 three years and I left, the city manager could say I thought it worked better the
24 other way, we're going to go back to that, **that wouldn't change anything** other
25 than the new person coming in would be hired the same way that I was hired as
26 a police chief, a department head.
27
28 WENDY And I think capturing someone with your experience to handle that is extremely
29 valuable to the city. My other thought is, that right now, as I understand it the
30 deputy city managers rotate departments. I don't know if it's annual or every
31 two years or what the situation is but I think that what you're implying is that
32 your position would not be in this rotation. But let's say you really want to
33 branch out and be reassigned just to have a different experience for you then
34 we would end up back in the same situation that it is now.
35
36 Ed Zuercher (inaudible) I'm not sure I understand (inaudible) wouldn't be able to have
37 department heads rotated in. [*Zuercher explains how rotation works with other*
38 *departments*]. I don't think that would be a concern.
39
40 HARRIS The only thing that I can see (inaudible) I don't know what it would be but if
41 there was something related that Frank wanted to transfer to me that he may

1 do something like that. **But I can't see him rotating another deputy manager**
2 **into that position that would involve the police chief plus you also have in that**
3 **portion of the job that he be a certified peace officer.** Deputy city managers
4 are not always (inaudible).

5
6 WENDY OK

7
8 1428 *Other business about reserve officers with Pinnacle discussed among board.* 2445

9
10 Ron Snodgrass With regards to what Chief Harris brought up, I took a lot of notes here, **he's**
11 **going into a new job classification deputy manager** above a department head
12 **he's currently a department head now, the language is short and sweet, it says**
13 **he's, the member is in a position where he performs duties and exercises**
14 **authority, the same duties that were performed and the same authority that**
15 **was exercised. He's got new duties, he's got duties beyond the scope of what**
16 **he ever had before, he's got a whole different job classification** and he even
17 **said that some of those duties, which he performed before will be delegated**
18 **down to the number 2 XO. I don't see where if Jack gets this offer and even**
19 **takes it after January 19th, as you said, I don't think it's going to be in conflict**
20 **with anything process in all honesty. I just don't see a problem with it.** I don't
21 feel comfortable that we necessarily have a board vote on this issue, but I think
22 we can at least maybe go on and have a consensus that from what he told us
23 this isn't going to be an issue. And I think that's what he's looking for. Maybe
24 that he might lose his retirement number one and jeopardize his DROP number
25 2.

26
27 Ed Zuercher Looking at the attorney, I'm not sure we'll be able to go around the room and
28 develop consensus

29
30 Attorney That would be the equivalent of a vote (inaudible) general issue

31
32 Ed Zuercher Chief Harris, are you in need of a specific action of this board now? What is it
33 you...

34
35 Harris The only thing that I am seeking is that obviously my retirement (inaudible) very
36 concerned about, this position has to be authorized by the Mayor and the City
37 Council, before the City Manager goes forward with that as I understand it from
38 what the attorneys for the city have said is that there's no issue as far as the city
39 is concerned, it's only my retirement that would be affected, so before I would
40 want the Mayor and the Council and the City Manager to go to that effort of

1 approving the position, I just want to be assured I wouldn't be violating anything
2 by accepting that position, so what I was really looking for from the board was,
3 we either have a problem with it or we don't, and if you don't then I'll go
4 forward with it.
5
6 Ed Zuercher What if we were able to indicate the way we're posted today?
7
8 Attorney We can certainly engage in a general discussion of reinforcing, we've done
9 that, with respect to reserve officers in terms of your view and that
10
11 Wendy I actually do have a question that may be appropriate for executive session, I
12 don't know. It's a general question, I don't know.
13
14 Attorney As board members you are entitled to go into executive session and it's posted
15 to receive legal advice. You are certainly capable of doing that.
16
17 Wendy OK
18
19 Ed Zuercher Let me ask a question, I understand the Chief's timing, without taking a specific
20 action relative to a specific individual today, which is my oversight. Would we
21 want to come back and just have a special meeting like on Monday afternoon or
22 Tuesday morning, to call and they can do that to take a specific action on his
23 question, is that what we would need
24
25 Attorney If you feel comfortable you have before you enough specific that the board
26 should take some action on that you could certainly, you could approach it that
27 way.
28
29 Ed Zuercher I feel comfortable after the Chiefs presented a situation and would like to have a
30 specific sense of the board's direction on that.
31
32 Wendy I feel comfortable, but I just need one clarification
33
34 Ed Zuercher You feel comfortable...
35
36 Wendy If I could get one clarification...
37
38 Ron Snodgrass Before you do that, let me shift gears back to the generalness of this, and maybe
39 I made it too specific saying Jack. Let me, I shift gears and those comments that
40 I made, if it wasn't Jack sitting here, if it was, say for example Scott, and he was
41 in the same situation wanting to come back and there, we would do that with

1 Scott. Any employee that would come and lay that foundation down to us, as it
2 was set forth by a member, I would have the same feeling whether, whoever it
3 is, so, I'm saying in generalities, and so, and the general statement I think we
4 can, I think we can form a consensus here, whether, I'm not saying a vote, but a
5 consensus on the general nature, that we can say, I think we're posted for that
6 but I think we can make that comment, but I'm ready to go back to E Session.
7

8 Ed Zuercher I guess it really comes to what the Chief feels like he needs to be able to move
9 forward...

10

11 Harris Maybe if I, (inaudible) if this were, Ron I guess at the moment hypothetical, if
12 this hypothetical situation were to occur, I guess, if the board said, we don't see
13 an issue with it as far as we're concerned, hypothetically, and they went
14 forward with that position, it wouldn't actually take place until sometime in late
15 January anyway. So, I guess the board would have the ability between now and
16 then if something else developed that changed, that can say wait a minute,
17 now, we received something or looked at a more specific case, does it make any
18 difference whether it's a hypothetical situation in general that would effect
19 anyone in this particular position or rather the needs specifically...
20

21 Ed Zuercher I mean, this is posted for possible board action, although what that board action
22 is, I'm not clear

23

24 Donna I think it was representative of possible policy statements due to individuals
25 reflect

26

27 Attorney That's certainly has been my approach, I guess I would have one question. Is it
28 possible do you think to present to the board in writing, in short order, a
29 synopsis of what you've said, that this is what's going to happen?
30

31 Harris Sure

32

33 Ed Zuercher And then the board taking action upon that basis.

34

35 Attorney Right, the board certainly could, could, and you could go around the room and
36 each individual board members could express opinions and thoughts about
37 what the statute means and how they view that, but I guess my concern is
38 you've got a specific case that's kind of been presented to you and it's not
39 posted for action on that specific case, and that gives me a little discomfort,
40 given the public meeting notice law.
41

1 Wendy My question is about the same authority... Because I understand you would
2 have a lot of the same authority, so here's my hypothetical. If the kind of
3 scenario that you're describing, is it significantly different in terms of the law
4 from say a line officer coming back as a Sergeant, where they would have
5 additional duties and responsibilities and I assume authority, but they would
6 also have some of the same?
7

8 Attorney That's the question, and this is 2006 legislation, there is not a series of cases
9 that construe what the statute means, so you can only go back to the general
10 sense of the legislature which was, receipt of pension while receiving, while
11 being in pay steps...
12

13 Ed Zuercher I guess what I, the difference to me in what she described as an officer coming
14 back as a Sergeant is different because they are coming back still with only the
15 responsibility to a sworn person. What the Chief described to me was, civilian
16 duties added on to existing duties.
17

18 Wendy I just meant, but if some of this work remains the same, but the scope of the
19 work is now much bigger than what the original piece was and that's how I'm
20 comparing it, there's this much originally and now I'm taking a job that's this
21 much
22 TAPE CUTS OUT
23

24 Ed Zuercher ...to take your point, to me the difference, what I feel, what I've heard was for
25 additional duties, civilian duties are being added which to me makes it
26 significantly different because there are civilian duties that are part of the job of
27 Deputy City Manager that's been described. That to me...
28

29 Wendy (inaudible) this, I'm comfortable that the hypothetical used to describe... I
30 (inaudible)
31

32 Ed Zuercher We do have a member who's asked for some executive advice, is that Executive
33 session advice from the attorney.
34

35 Donna I think it will only take a few minutes
36

37 Ed Zuercher Hang loose with us for just a minute
38

39 EXECUTIVE SESSION (misc. inaudible conversation)
40

1 Ed Zuercher ...advice from the attorney, Chief I think what we would like to do is... Chief
2 could you give to Donna for the board in writing a description of what your
3 understanding is that we are being, we would be asked to consider and then my
4 question, I guess I go back to you Chief and then I'll go to the board, um, how
5 much and how quickly do you need certainty from this board as to a position on
6 what it is you have presented and will be presented in writing. You've heard
7 general comments from different ones, um, but, it really comes down to, you're
8 the guy at risk on all this stuff, so,
9

10 Harris Uh actually, I don't to have to have an absolute until mid January and then I
11 would officially take over the other position. However, I would think that the
12 City Manager and the Council and the Mayor would want to know something
13 before that, because they would have to get all the contract and you know
14 approve the position. My understanding is that the City Manager wants to take
15 that before the City Council on Tuesday but that works could be ...
16

17 Ed Zuercher The earliest City Council would be able to act would be November 1st. I know
18 they are going to Executive session for attorney's advice on several things
19 relating to the city managers employment contract in which that is a part of it,
20 but the earliest the council would be able to act would be November 1st, so
21 what's the pleasure then of the board given that? Should we get in writing from
22 the Chief and then schedule a special session with that before November 1st?
23

24 Wendy Are we allowed, if you were to email that out to us, if we proofed it, are we
25 allowed to have a phone conference between us?
26

27 Donna We certainly are
28

29 Wendy And do we have the capacity to do that between the number of people?
30

31 Donna We could do that
32

33 Wendy That might work
34

35 Harris ...this afternoon. It's just what I told you, so, it's not difficult to write
36

37 Wendy I guess I have a question that maybe would alleviate some of the heartburn
38 (inaudible), has there been any consideration in this new position that you
39 would be called something other than police chief?
40

1 Harris We had discussed that, Frank and I had discussed that being his main concern,
2 with that was, there is nothing internal that would be a problem with changing
3 the title, but **he felt the community would want to have a police chief** and to
4 change the title to commissioner or director or something he didn't feel that the
5 public would be comfortable with that so he wanted to keep that as **one of the**
6 **job duties**. That was his position. **Officially it would be Deputy Manager, but**
7 **it's kind of hard to introduce the Deputy Manager to the community, when**
8 **they are looking to the police chief to speak to them**
9

10 Wendy Is the language in the law that's say same duties and same authority that, and I
11 don't have a problem with it, but I guess my concern is that the Fund Manager
12 **would say no, there's not enough distinction between what you used to do and**
13 **what you do now, and the job description (inaudible) seems like the same.**
14

15 Harris **Actually, I have already met with the Funding Manager and he said he didn't**
16 **have a problem with it.** And the attorney that works with him was there, that
17 was about 2 weeks ago.
18

19 Ed Zuercher Ok, other questions...
20

21 Wendy Did you get anything in writing from the city attorney?
22

23 Harris The City Attorney?
24

25 Wendy Didn't you say you had met with them and they didn't have a problem with it
26 either?
27

28 Harris No, no the law department had asked to research it and they were looking at it
29 I think from pre August change and they were saying **as long as there is a break**
30 **in the change of job duties we don't see an issue with it.** Now the attorney that
31 I mentioned here was the attorney that was with the Funding Manager that
32 works over in his office. I made then and they said we don't see an issue with it.
33 **Actually asked them to put that in writing and they said yes, if I would, if they**
34 **felt that the proper procedure though was to bring it here and they would**
35 **upon your approval put it in writing for me and for the city**
36

37 Wendy Could they put it in writing prior to our decision?
38

39 Harris **Uh, that is what I was asking but they actually wanted it to go before you first.**
40

1 Ed Zuercher Could we, would it be possible, OK Donna (inaudible) for you to call the Fund
2 Manager and have that conversation about what they can or what they are
3 willing to do with that regard
4
5 Donna I'm happy to do that, I would anticipate that their response may be that they
6 would apply only after the local board would make a decision. But I'm happy to
7 contact them.
8
9 Ed Zuercher Probably not going to get the answer that you want.
10
11 Ron Snodgrass They aren't going to do anything. **I was with Jack at the meeting** and they
12 **deferred off to, they said it's the local board decision and will abide by whatever**
13 **the local board decides**
14
15 Donna Wonder if they would put that in writing (inaudible). Will we have our meeting
16 sometime before the 1st or how are we going to do this, and then go and ask for
17 the legal opinion (inaudible) as soon as possible for Jack?
18
19 MEETING SCHEDULING DISCUSSION
20