

Council Chambers
Municipal Building
April 3, 2008

The McAlester City Council met in a special joint session on Thursday, April 3, 2008, at 6:00 P.M. after proper notice and agenda was posted March 31, 2008, at 3:00 P.M.

CALL TO ORDER

Mayor Lewis called the meeting to order. Council Roll Call was as follows:

Present: Buddy Garvin, Haven Wilkinson, Sam Mason, Weldon Smith, Travis Read,
Donnie Condit & Mayor Lewis

Absent: None

Presiding: Don Lewis, Mayor

Staff Present: George Marcangeli, City Engineer/Public Works Director; Harold Stewart, Fire Chief; Jim Lyles, Police Chief; David Medley, Utilities Director; Mel Priddy, Community Services Director; David Burke, City Treasurer; Elaine Green, acting City Attorney and Cora Middleton, City Clerk

Mayor Lewis asked Stephen Foster to call the Audit and Finance Advisory Committee to order. He asked that all comments other than those by the presenters be limited to five (5) minutes

SCHEDULED BUSINESS

- 1. Discussion, and possible action, on Crawford and Associates findings related to the BKD Study. (*Deanna Crawford, Crawford and Associates, P.C.*)**

Deanna Crawford addressed the Council explaining that her firm had been engaged to review expenditures that were questioned by the BKD audit. She distributed a handout that contained information regarding the various items that she had reviewed and which of those items would have qualified as appropriate expenditures. She explained the procedure that was used to perform this review and she stressed that she had only looked at large items. Ms. Crawford commented that from the total amount of \$3,291,826.00 that was originally questioned by the BKD audit she had been able to find \$2,346,054.50 that was potentially qualified expenses. This left \$945,771.60 that needed to be repaid. She added of that amount \$800,000.00 needed to be repaid to economic development and \$145,771.50 either repaid or set aside for capital improvements.

Councilman Condit arrived at 6:08 P.M.

Ms. Crawford stated that they could have continued to search for more potentially qualifying expenses but that could have cost more than just repaying the \$945,771.60. She added that she was not sure of where the Council wanted to go from this point and she had not dealt with this before.

Mayor Lewis then asked for a motion from the Council.

Councilman Read moved to accept for discussion the findings of Crawford and Associates related to the BKD study. The motion was seconded by Councilman Garvin.

Before the vote, there was discussion among the Council regarding the list of items that had been distributed to the Council.

Mr. Roath commented that the \$3.2 million from the BKD study had been reduced to \$945,771.50; he suggested that they look at this from a legal standpoint with either the City Attorney or a Bond Attorney. He further recommended that the City Attorney work with a bond attorney to recommend to the Council what the next appropriate steps would be.

Ms. Crawford stated that the 2007 audit was contingent on the decision regarding this issue.

Harold King addressed the Council, stating that the citizens were still not getting all of the information and it was not clear when the payments came relative to when the funds were received. He also questioned if the funds came out of the right year.

Ms. Crawford stated that the debt payment was a moot point and that the funds transferred out of capital improvements did not have to be spent at that time; it could be spent at a later time.

Steve Foster asked about the leases that were listed on Ms. Crawford's spreadsheet. He stated that they were on going leases and they needed to be clearly documented, so that in ten years or so they would not be confusing.

Ms. Crawford stated that she treated the leases as actual purchases of equipment.

Steve Harrison commented that there were two items that predated the transfer but they were still in the same fiscal year. He asked if that was how Ms. Crawford determined where to start her research.

Ms. Crawford answered that she started with when the purchase occurred and that anything that was purchased from the date of the issuance of the bonds could actually be used toward the amount in question.

Rick Beams stated that in the early 80's a Councilman had actually sued the City for misuse of the bond funds and a court had decided how the funds could be spent.

Mr. Roath commented that in order to move this along he would suggest to the Council that they authorize the City Attorney to work with a bond council to answer the legal questions and to potentially draft a repayment plan and bring that back to the Council along with any legal answers to the questions that have been raised by Ms. Crawford. That way the City Council can decide what action they feel is appropriate to take regarding this matter and allow that portion of the audit to be completed.

Councilman Mason moved to amend the motion to use the City Attorney in conjunction with a specified bond attorney, not the original bond attorney, to investigate this issue and report back

to Council their recommendations on what they felt were legal issues according to the bond indenture and how to address the issues and the follow up with the City Treasurer and structure a possible repayment plan. The motion was seconded by Councilman Condit.

Before the vote, Councilman Garvin asked who would decide on the bond attorney.

Mr. Roath suggested that the City Attorney have the leeway to select the bond council.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Condit, Read, Wilkinson, Garvin, Mason, Smith & Mayor

NAY: None

Mayor Lewis declared the motion carried.

2. Discussion, and possible action, of the One Cent Sales Tax. (*Rheba Henderson, Hulme, Rahhal, Henderson, Inc.*)

Councilman Smith moved to open the discussion regarding the one cent sales tax. The motion was seconded by Councilman Read.

Before the vote, Rheba Henderson explained that one of the issues that was holding the audit up was the due to and from that was created in the prior years that Ms. Crawford had just addressed. She stated that part of the problem was that in the past it was understood that the sales tax receipts that were put into the Public Works Authority could be used for both debt service and capital outlay. She stated that the calculations that Ms. Crawford had used were based on the original bond attorneys' opinion. She commented that with the different opinion stating that the receipts could only be used for the debt service, there was a different issue and possibly a large contingency. She added that she needed guidance as to how the Council wished to treat the excess sales tax receipts so she could complete the audits accordingly.

There was discussion among the Council regarding the differing opinions concerning the excess sales tax receipts, what steps they should take, which direction this item should be researched and the need to get an opinion from a bond attorney that had not been involved with the original bond issue. Many on the Council were reluctant to make a decision without more information regarding the amount of excess sales tax revenue and another legal opinion.

Harold King addressed the Council stating that this is about what the people want and what they approved. He added that it was very simple, the money could only be spent on the bond repayment; he could not see any other option.

Steve Harrison made a presentation on his interpretation of the issue for the Council.

There was discussion concerning the school bond issue and how it had been handled recently.

Joyce Carlson addressed the Council stating that this matter had been brought up four years ago.

Councilman Smith moved to table this item indefinitely and to authorize the City Attorney to contact a bond council to review the one cent sales tax and schedule a meeting with the City Council to discuss options. Councilman Mason suggested that the bond council should be other than the original bond council. The motion was seconded by Councilman Condit.

Councilman Condit remarked he would like to find out more information regarding the suit that Mr. Beams had spoken about.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Wilkinson, Garvin, Mason, Smith, Condit, Read & Mayor Lewis

NAY: None

Mayor Lewis declared the motion carried.

3. Discussion, and possible action, on a proposed letter of Engagement with the accounting firm of Hulme, Rahhal, Henderson, Inc. to audit the of Schedule of Restricted Sales Tax Receipts and Debt Service Payments on the 1992, 1995, 1999 and 2002 Capital Improvement Bonds. (*Rheba Henderson, Hulme, Rahhal, Henderson, Inc.*)

Councilman Smith moved to table this item indefinitely, seconded by Councilman Condit.

Before the vote, Steve Harrison addressed the Council stating that they had approved a resolution in February authorizing an audit of 1992 forward on the total sales tax received on the penny sales tax. He commented that information would be crucial for this item. He stated that the other information regarding what had been spent out of that revenue would not be duplicate work and Ms. Henderson had already indicated that it would not take a lot of time or effort. He further stated that if the Council were to table this item they would just be deferring something that they wish they would have done anyway.

Councilman Read asked Ms. Henderson if this would be duplicate work.

Ms. Henderson stated that if the capital outlay was deemed to be allowable, that would be a separate set of work.

There was discussion among the Council how far to go back with the engagement, the extra cost to the City, how it would affect the budgets and how long it would take for Ms. Henderson to complete the work.

Councilman Smith asked to withdraw his motion.

Ms. Henderson stated that the extra cost would be nominal, the engagement letter had been left open as to how far to go back with this audit and she would like to have until May 15, 2008 to complete this work.

Councilman Smith moved to authorize Ms. Henderson to complete an audit of the schedule of restricted Sales Tax receipts and Debt Service payments on the 1992, 1995, 1999 and 2002 Capital Improvement Bonds by May 15, 2008. The motion was seconded by Councilman Condit.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Mason, Smith, Condit, Read, Wilkinson, Garvin & Mayor Lewis

NAY: None

Mayor Lewis declared the motion carried.

Mayor Lewis requested that Steve Foster adjourn the Audit and Finance Advisory Committee meeting.

ADJOURNMENT

There being no further business to come before the Council, Councilman Wilkinson moved for the meeting to be adjourned, seconded by Councilman Mason. The vote was taken as follows:

AYE: Councilman Smith, Condit, Read, Wilkinson, Garvin, Mason & Mayor Lewis

NAY: None

Mayor Lewis declared the motion carried, and the meeting was adjourned at 7:49 P.M.

ATTEST:

Don R. Lewis, Mayor

Cora Middleton, City Clerk