

Council Conference Room
Municipal Building
May 22, 2008

The McAlester City Council met in Special session on Thursday, May 22, 2008, at 6:00 P.M. after proper notice and agenda was posted May 9, 2008, at 9:00 A.M.

CALL TO ORDER

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

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

Staff Present: Mark Roath, City Manager; David Burke, City Treasurer; Robert Ivester, City Attorney and Cora Middleton, City Clerk

SCHEDULED BUSINESS

- 1. Discussion, and possible action, with Bond Council about the One Cent Sales Tax.** *(Terry Hawkins; Phillips, McFall, McCaffrey, McVay & Murrah, P.C. Attorneys at Law)*

Councilman Smith moved to open the discussion with Bond Council, Terry Hawkins, about the One Cent Sales Tax. The motion was seconded by Councilman Mason.

Before the vote, Mayor Lewis explained that previously the Council had requested that Mr. Ivester contact a bond attorney, other than the two that had previously issued opinions, to review and issue an opinion regarding the excess from the one cent sales tax and this meeting was a result of that request.

Mr. Hawkins called in at 6:00 P.M. and Mr. Ivester asked him to tell the Council about himself and his qualifications. Mr. Hawkins explained that he had been in bond law for about twenty eight (28) years, he had been with his current firm about twenty (20) years and had done over twelve hundred (1200) financings around the state.

Mayor Lewis introduced himself and the Councilmen that were present along with the City Manager and the various other citizens that were present at the meeting.

He stated that he had reviewed the information that had been sent by Mr. Ivester and had also seen the memo from Steve Harrison to the City Manager that was written in December. He stated that the memo that Mr. Harrison had submitted to the City Manager was pretty concise and it gave the background of the issue. He stated that he thought this could be open for broad interpretation. He added that based on the information, he thought to take the safest most conservative route and he agreed with Allen Brooks' opinion that the excess should only be used for the debt service. He stated that he said

that out of an abundance of caution. He then cited two examples from other that had capital improvements. Mr. Hawkins then asked if there were any questions.

Mayor Lewis opened the meeting up for questions from the Council.

Councilman Smith asked that in the past if these excess receipts had been spent incorrectly what the Council do should about it.

Mr. Hawkins answered that he was not a litigator and he thought that Allen Brooks had given the Council four options. He added that it depended on what the Council thought would happen. He commented that the safest option would be to have the District Court give an interpretation or a declaratory judgment. He added if the Council went before the Court with a friendly suit it could have someone intervene and turn it into an adversarial suit.

Councilman Smith then asked if the matter was taken to Court, would that clear up the potential for any taxpayer lawsuits.

Mr. Hawkins answered that it possibly could; it would depend on how it was structured.

Councilman Mason commented that there had been a teleconference with Allen Brooks and he was asked to furnish a written opinion. He added that he had assumed the he, Mr. Hawkins, would do the same thing. He requested that Mr. Hawkins include the two cases he had spoken about during this meeting. He then added that the Council had engaged the City's Auditor to review the records back to 1992 and are waiting on the report.

Mr. Hawkins stated that he would be happy to furnish the sales tax ordinances but he felt awkward about furnishing a written report, because he had interviewed with the former City Manager for the position of bond attorney.

Councilman Mason stated that Allen Brooks had not been engaged as the bond attorney only to furnish the opinion and there had been a split opinion. That was why the Council had requested that Mr. Ivester contact a third attorney to furnish another opinion.

Councilman Garvin stated that since Mr. Hawkins was unable to furnish a written opinion it was his understanding per you options that the Council should go to District Court for assistance.

Mr. Hawkins stated that was an option but every group was different and he was not sure how you feel your situation is.

Councilman Garvin stated that they were wanting someone to tell them what to do point blank. He added that he would feel comfortable if they could get that type of advice.

Councilman Mason stated that this was a final analysis only and they could take the advice from any attorney the chose to engage. He added that the final decision rested with the Council. He commented that in his opinion they should consider the worst case scenario.

Councilman Smith asked if Mr. Hawkins would feel less awkward in rendering a written opinion if Allen Brooks is not engaged as the City's bond attorney.

Mr. Hawkins stated that he would give more thought to it, attorneys try not to step on each others toes. He added that if he were to give an opinion it would be very similar to the one that Allen Brooks gave.

Mayor Lewis asked that since he had mentioned going back to the citizens had he had experience with that option.

Mr. Hawkins stated that he couldn't think of any situation. He added that this tax goes to 2031 and the Council needed to balance what to do. Request a validation suit or put back to the voters, but it would have to be worded in such a way to make it more concise and clear. The Council could always leave it like it was which could draw a taxpayer lawsuit.

Councilman Garvin stated that they probably needed to let the court decide.

Mr. Hawkins stated that was an option. It all depends on what you think the voters' reaction would be if you tried to clarify the wording. He also asked if the excess was used for capital improvements and debt service.

Mayor Lewis stated that the auditors had been asked to clarify what was used for capital improvements and City operations.

Kevin Priddle asked if there was a statute of limitations on this kind of situation and since you and Mr. Brooks agree two to one the City needs to determine what the receipts were used for.

Mr. Hawkins stated that he had never thought about it and Mr. Ivester stated that he did not know.

Steve Harrison asked if whether the City gets a Court ruling or take back to the voters themselves, what of the Bond holders. Has the City been taking money from them?

Mr. Hawkins stated that as long as the City is current on all of the payments, they usually will not call the bonds. He stressed that as long as the City is current there are usually no complaints.

Mark Roath commented that Mr. Brooks addressed the issue of going forward. Assuming that we have to go back there will be an additional issue of interest and if we will be required to pay back additional interest.

Mr. Hawkins stated that he had not thought of that, but he thought that if you recognized the problem and try to remedy it, he didn't think the interest would be imposed, but this is just a quick answer. Everyone acted in good faith; it's just that the ordinance and proposition were not drafted clearly.

Steve Foster commented that Mr. Hawkins had touched upon election as possible solutions. He added that this would be good for going forward but how to protect from past expenditures.

Mr. Hawkins stated that the Council was waiting on the report from the auditors and asked if they had a figure of what that would show.

Mayor Lewis stated that they did not know at this time.

Mr. Hawkins stated that one approach is to consider what is done is done and just go forward. Or try to file a friendly suit and word it correctly. If the report comes back and have funds to try to cover and reimburse. He stated that he did not know what was feasible for the City but he had experience with validation suits and if that option was chosen he would want Mr. Ivester's help.

Kevin Priddle asked if it was possible to go back to the electors and ask them to ratify how those funds were spent in the past. If blessing is received would the City not be required to repay the expenditures?

Mr. Hawkins commented, that on expenses it seemed almost open ended.

Mr. Ivester stated that ruling could be gotten through the Court.

Mr. Hawkins stated that if the City asked for a validation suit they would need to give a detailed story of what happened, show what the support was of the voters and as long as you give the judges something to hang his hat on they are reluctant to overturn what the voters approved.

Chris Fiedler asked if Mr. Hawkins had any knowledge of this type of matter being tried at the State Supreme Court level or of an Attorney General opinion.

Mr. Hawkins stated something of this nature the State Supreme Court would deny and send back to the District Court and he had not researched to see if there was an Attorney General opinion.

John Browne stated that in your opinion this should be handled conservatively but you weren't saying that anything had been done wrong.

Mr. Hawkins answered yes that was his opinion.

Mayor Lewis asked if there were any other comments or questions. As there were none, he commented that he did not feel that the Council was in a position at this time to make a decision regarding what course of action they should pursue.

ADJOURNMENT

There being no further business to come before the Council, Councilman Mason moved for the Special Meeting to be adjourned. The motion was seconded by Councilman Garvin and the vote was taken as follows:

AYE: Councilman Garvin, Mason, Smith & Mayor Lewis

NAY: None

Mayor Lewis declared the motion carried, and the meeting was adjourned at 6:40 P.M.

ATTEST:

Don R. Lewis, Mayor

Cora Middleton, City Clerk