

MINUTES
SPECIAL MEETING
MUNCIE COMMON COUNCIL
300 NORTH HIGH STREET
MUNCIE, INDIANA 47305

MONDAY, JUNE 29, 2020

SPECIAL MEETING: 6:00 P.M., 1ST FLOOR CITY HALL AUDITORIUM.

PLEDGE OF ALLEGIANCE: Led by Councilwoman Davis.

ROLL CALL:	PRESENT	ABSENT
Aaron Clark	X	
Richard Ivy	(Later Present)	X
Troy Ingram	(Later Present)	X
Ralph Smith	X	
Jeff Robinson	X	
Ray Dudley	X	
Brad Polk	X	
Jerry Dishman		X
Anitra Davis	X	

ORDINANCES PREVIOUSLY INTRODUCED:

ORD. 4-20 AN ORDINANCE TO AMEND SEC. 50.01 OF CHAPTER 50 FOR THE MUNCIE CITY CODE ENTITLED "SANITARY DISTRICT ESTABLISHED."

A motion is made by Robinson and seconded by Davis to Adopt.

Mayor Dan Ridenour thanks everyone for attending this Special Meeting. The states statute says that Sanitary Districts, when established, can be established between 3 and 5 people. What it doesn't say is that it can be adjusted by anyone other than the Council. What the Mayor is wanting the Council to do was go ahead and adjust that. This was created back in the 1960's and the District has had 3 members. The Administration had looked at increasing the number of members back in January but due to further legal action being taken, the Council Tabled it. It is the Mayor's opinion that he does not want to have the City Engineer (which the court did say was entitled to

a position on that Board) be placed on that Board in something that overruled the authority of the Council. The Council is the one who can determine how many people should be on that Board so in this ordinance, he asked the Council to take the Board from 3 to 5.

Councilman Smith asks why the Administration wants to increase the Board from 3 to 5. Mayor Ridneour thinks there needs to be more eyes on what happens at the Board meetings and having two extra members will help eliminate the likelihood that things go too quickly. He is wanting to place people on the Board that will ask questions and he certainly would like the City Engineer on the Board as court ruled that the City Engineer is entitled to a position to serve on the Board. The Mayor thinks it is important to be able to have the transparency that he and his team want as citizens of Muncie with the Sanitary District. He assumes that everyone on the Council is currently paying a Sanitary District bill and it is in the interest of the rate payers and the taxpayers of the citizens of Muncie to have 5 people on that Board to improve that transparency.

Smith then mentions their discussion in January and February regarding improved oversights and additional accountability. He asks if those are still the thoughts of the Mayor. The Mayor states absolutely and adds he is a firm believer and hopes that those on the Council are as well in that the Sanitary District is extremely important with many great employees. The Administration wants to make sure that Board is doing what it needs to do to represent the ratepayers and the taxpayers of the citizens of Muncie.

Smith then refers to a Star Press article dated June 19, 2020 where the Mayor was quoted as saying he “would leave the Board at 5 and work with council to reduce it back to 3 in 2021.” He asks if that is still thoughts of the Mayor. Mayor Ridenour replies the more he thinks about that, that might have been a phone interview while he was driving, but, he thinks having 5 is important and that 5 is the best for our city, long-term, not for just his administration but administrations going forward. It is less likely for 5 people to be able to put something through that maybe isn’t in the best interest of all people, than it is for 3 people. It only takes 2 people, concurrently, to be able to move things forward. The Mayor encourages it to be taken to 5 and to leave it there. He thinks that is the best way, long-term, to protect the citizens of Muncie. Smith certainly agrees.

Smith then asks by placing the City Engineer on the board, if he is going to be paid by the Sanitary District. The Mayor states they may have to come back and address that and may have to do it in the Sanitary District meeting but it is not intended for the City Engineer to be paid. Smith states he was just asking to clarify because that may be considered double-dipping by some. Mayor Ridenour states it would be. The Council does approve the budget but that is not what is at issue tonight. So, they were going to ask at the meeting on Wednesday to have the City Engineer's pay, (stipend) that he is not going to accept or receive it.

Councilman Dudley asks that if this passes and the numbers increase to 5, the other appointment would get that stipend. Mayor Ridenour replies yes. Dudley then asks those other 2 appointments would then be mandatory going forward. The Mayor states yes, going forward, there would be 5 that are spread out except for the City Engineer. Dudley clarifies there is not a date set on the 2 new appointments and that it is at the Mayor's leisure. Mayor Ridenour responds he would appoint immediately and they would attend the July meeting, which is Wednesday, July 8th. Dudley reiterates down the road, 16 – 20 years from now and with a new City Administration that would then have the ability to reappoint those 2 positions. The Mayor states absolutely.

Councilman Robinson asks if those board appointments on the Sanitary District are politically staggered, meaning does there have to be a certain number of Republicans verses a certain number of Democrats. Mayor Ridenour answers absolutely and that is currently the case. Currently on the Board, there is 1 Republican and 2 Democrats. The City Engineer is a Democrat. That makes it 3 to 1 which is another reason the Mayor felt like the Judge saying going to 4 (with all due respect to the Judge) was another violation and why he asked the Council President to see if there could be a Special Meeting. The Mayor knew that raising the number to 4 didn't fit. It could not be more than 1 different, therefore, the Mayor's second appointment will be a Republican and that will make it 3 Democrat and 2 Republican. Dudley asks if it has been determined who that other appointment would be. The Mayor states no. It depends on what the council says today. He has, however, talked to a few people about it though. He plans to make a decision tonight, call them, let them know and announce it shortly. Councilman Smith states the Mayor already knows his recommendation. The Mayor clarifies that he does.

Drew Hall wants to comment on a question that was asked by Councilman Smith. There is an Attorney General opinion that talks about the lucrative office requirement.

Being both the City Civil Engineer and serving on the Sanitary Board does not violate the law against holding two lucrative offices so that person could receive both pays. Councilman Smith thinks that is wrong. Mr. Hall states okay, that is fine. He moves on and refers to a copy of the Judge's opinion for this case in regards to a copy being supplied to the entire Council. He explains that it makes reference to a couple state statutes, specifically I.C. 36-9-25 Sec. 3(b)(3) and Sec. 3 larger, deals with the composition of the Board. If you read the language of the statute, in conjunction with the other parts of the statute, what 3(b)(3) says is that "the Board shall consist of not less than 3 not more than 5." Sec. 1 states that "the Sanitary District exists in any city (such as Muncie) where it is adopted by ordinance." It was adopted by ordinance way back in the 1960's, recodified, transferred to the Board of Works and Safety, got back out and then re-established firmly and finally (as it says in the Judge's order) around 1990-ish. Ever since then, if you look at Sec. 50 of the Code of Ordinances right now, that is what it makes reference to is that it was established and adopted through I.C. 36-9-25. The requirements of that section state that the Sanitary District shall exist in such cities as an Executive Department of the Municipality. It says that the Mayor shall appoint. Now, referring to a question asked by Councilman Dudley, Mr. Hall asks what happens if a new Administration comes in, the Board members terms expire and the new Mayor decided not to appoint 2 new Board members? Can you force the Mayor to appoint them? No, because that is not how it works. The statute was set up so that the Executive Branch (being the Mayor) has the appointment responsibility. The Board wants to be 3, 4 or 5 members then the acting Mayor would make such appointments in accordance with the terms of the current officers and whether or not there is a City Civil Engineer. Mr. Hall states it kind of rubbed him the wrong way when it was said that the Judge didn't know what he was doing or didn't understand it because he has been serving the bar in East Central Indiana very well for well over 25 years and knows what he is doing. The section of the code, I.C. 36-9-25, which is what governs the District, in no way in any part makes any reference to City Council having the authority to establish the composition of the Board. They can adopt the chapter or not adopt it. The Council adopted it then state law governs. State law controls the composition of the Board, who makes the appointments, the terms and how they can be removed. The Council can sign this ordinance but what they are essentially doing is limiting the terms (or restricting terms) of a state law. If the Mayor within the next administration comes in and says he/she doesn't want to appoint the total 5 and only wishes to appoint the board to 4 or 3, that would technically be violating the city ordinance, however, it would not be violating state law. In this case, there would be a lawsuit, in which case this ordinance would not survive it. There is a way to do this and it is the Executive Branch's

department therefore, their responsibility. If the council wants oversight in accountability, that is on the Mayor who of which is more than welcome to coordinate with the Council if he wants but when it comes to how the Board is established, their powers, their termination, their government, it is already laid out clearly in a statute that has already been adopted by this Council. You cannot amend a state statute, you just have to abide by it.

In response to Mr. Hall, Council Attorney Dan Gibson presents himself and states that this is not amending the state statute. State statute says between 3 and 5 members. This is just specifying that the Mayor wants it to be 5 members. Again, the Council is not amending and is just operating within the confines as there is nothing there that says they cannot do this. Mr. Gibson does not know, however, as to whether it is required that the Council does this to be able to go up to 5 Board members. He actually agrees with Mr. Hall when the statute says it can be 3 to 5 but there is nothing that prevents them from mandating that it be 5.

Councilman Ingram mentions the reference of a lawsuit by Mr. Hall and asks if that could be a possibility. Mr. Gibson states one thing you learn when you become a lawyer is that there is always a possibility for a lawsuit. Anybody can sue for anything so therefore he does not know. What he can say is that it allows from 3 to 5 so he does not see how the Council doesn't have the authority to make it 5 if they want it to be, since they are the body that enacted this ordinance establishing an Executive Department to begin with. Like he had said, he also doesn't think it is required. Ingram clarifies that really then it is not necessary for them to approve this ordinance. Mr. Gibson states the Board could go from 3 to 5 without this ordinance, yes because they had merely just been following the state statute. Mr. Gibson reiterates that there is nothing in the ordinance, right now, that says it has to be 3 members. Why it has been 3 since the 90's, he does not know, as opposed to 5 but he does not believe there is anything that prevents them from making it 5. Ingram comments basically, this is a symbolic ordinance. Mr. Gibson is not sure that he wants to call it "symbolic" but the Council is permitted to do it and it is just saying to the Mayor that the Council wants there to be 5 members on this Board, one of which will be the City Engineer. Ingram refers to Mr. Hill saying that the Mayor could put 5 members on the Board whether the council says so or not because there is no restriction. Mr. Gibson explains he represents the Council, not the City Administration so that would be a question for the City Attorney but the state law currently says it shall be 3 to 5 and there is nothing in the ordinance right now that says it shall be 3 or 5, it was just created back in the 1990's.

Mayor Dan Ridenour states that his City Attorneys all agreed that the intent of the Council was 3. The reason they didn't put the City Engineer on is because that would've taken it to 4. They said the intent of the Council when doing the original ordinance was 3 so Mayor Ridenour is not going to break the rule of what he views as "policy" which is the Council setting the number at 3. The City Attorneys are not here to reiterate it but they were at the very first meeting. As for the 5, Mayor Ridenour believes in his personal opinion, not that of an attorney, is that he wants the Council to have its proper say in the setup of this particular agency. He asks that the Council vote to pass this ordinance and take the number of members up to 5. It will remain 5, based on the ordinance. State law says it can go down to 3 but he just does not think that it should be the ability of the Sanitary District or the Mayor to be able to go 5, 4, 3, or 3, 4, 5 or 5, 4, 3 whenever they want. Mayor Ridenour views it as the Councils' responsibility to set it at 5 or 3 (or he guesses at 4) but he is asking for 4 and is asking the council to follow through. The entire council confirm the Mayor is wanting 5 because he just said 4 (without meaning to). Mayor Ridenour confirms that he is asking for 5.

Councilman Ingram has one more question and asks if they pass this, does it mean that upcoming administrations will have to abide by it. Council Attorney Gibson states yes, the Council is establishing the Board at 5 members and it will be given 5 appointments. If they aren't going to appoint 5, he does not know if there is necessarily a consequence in terms of an ordinance violation. As the Mayor said, the Council is essentially establishing the policy that they want it to be 5 members. The Council back in the 90's created this department (or recodified it) as an Executive Department and they are setting forth the terms and qualifications of who they want to serve on that Board and represent the Department.

President Polk states for the record that Councilman Ingram and Councilman Ivy are both now in attendance. They were not present during roll call.

Council Attorney, Dan Gibson reminds the council that this was Tabled back in January (actually February 3, 2020) so there needs to be a motion to Bring it Off the Table. He is not sure what the current motion is but there would need to be a motion to Bring it Off the Table and then a motion to Adopt.

A motion is made by Smith and seconded by Dudley to Bring it Off the Table. A roll call vote showed 8 yeas, 0 nays and 1 absent (Dishman). MOTION CARRIED.

Councilman Robinson is assuming (as he does not have a calendar in front of him) that the next Sanitary District Board Meeting is this Wednesday. President Polk confirms. Robinson continues that the anticipation is that the two newest members will join that Board at that time. Polk believes so.

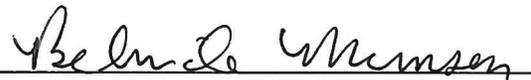
Questions called. Action is taken on the motion made at the beginning of the meeting by Robinson and seconded by Davis to Adopt. A roll call vote showed 8 yeas, 0 nays and 1 absent (Dishman). ADOPTED.

ADJOURNMENT:

A motion was made by Robinson and seconded by Dudley to Adjourn. A vote by acclamation showed 8 yeas and 0 nays with 1 absent (Dishman). ADJOURNED.



Brad Polk, President of
the Muncie Common Council



Belinda Munson, Muncie City Clerk of
the Muncie Common Council