



**MERIT SYSTEM COMMISSION
LAW ENFORCEMENT MERIT SYSTEM COUNCIL**

MINUTES
Open Meeting
Wednesday, August 7, 2019

Members Present:
John Fink, Chair
David P. Freund
Mike Hellon
Dan Eckstrom
Paul Rubin-telephonically

Also Present Were:

Cathy Bohland	Director, Human Resources
Tom Burke	Deputy County Administrator, Administration
Daniel Jurkowitz	Deputy County Attorney
Lenora Anderson	Paralegal, Pima County Attorney's Office
Laureen Pew	Paralegal, Pima County Attorney's Office
Eric Cervantes	Pima County Sherriff's Department Association
Jesse Comeau	Pima County Sherriff's Department Association
Aurora Hernandez	Recording Secretary, Human Resources

The Open Meeting of the Pima County Merit System Commission was called to order by Mr. Fink, Chair, at 1:27 p.m. Roll call, all present, Mr. Rubin attended telephonically. The Pledge was led by Mr. Eckstrom. All persons in attendance were asked to state their names for the record.

Item D. Other Business

Discussion and Action:

- 1. Discuss the Commission's practice in setting appeal hearing dates and possible utilization of hearing officers: Response to memorandum of Tom Burke regarding the same.***
- 2. Discuss the term/pending expiration of the contract of Barry M. Corey for legal services, advice, and representation for the Merit System Commission/Law Enforcement Council preferences regarding its legal counsel and the role, if any, of the Commission /Council regarding any possible new Request(s) for Proposals to be utilized by the Pima County Procurement and /or Human Resources Department(s).***

Mr. Fink reviewed the Handouts for discussion at the meeting. Some items pertained to Item #1 and others for Item #2 of the Agenda.

1. Merit System Commission Agenda for August 7, 2019.
2. Memo from Mr. Tom Burke, County Administrator, Administration to C.H. Huckelberry, County Administrator, Re: Merit Commission Meeting Schedule
3. Two page response from Mr. Fink, Commission Chair, to Mr. Burke.
4. Mr. Fink's availability since February 2019. Mr. Fink explained his availability is thirteen (13) working days per month. He reviewed the procedures in obtaining a quorum.
5. E-mail from Mr. Burke to County Administrator C.H. Huckelberry, Human Resources Director, Cathy Bohland, and Mr. Fink, Commission Chair, dated August 5, 2019, Re: Mr. Corey conflict of interest regarding the RFP.
6. E-mail from Mr. Fink to Mr. Burke requesting this meeting dated August 6, 2019.
7. E-mail from Mr. Corey to Mr. Fink, Re: Mr. Corey history w/Commission dated August 7, 2019 w/attachments:
 - a. MSC Open Meeting Minutes dated November 22, 2016;
 - b. MSC/LEMSC Motion to the BOS dated November 22, 2016, Re: Mr. Corey contract to BOS.
8. A portion of Pima County Contract for DeConcini, McDonald, Yetwin & Lacy P.C. (Mr. Barry Corey) provided by Ms. Bohland, Human Resources Director.

Mr. Fink explained Mr. Corey had recused himself from the hearing and would not be present. Mr. Fink further stated that Mr. Corey did provide the Agenda items for the meeting.

ITEM #1- Discuss the Commission's practice in setting appeal hearing dates and possible utilization of hearing officers: Response to memorandum of Tom Burke regarding the same.

Mr. Fink questioned Mr. Burke as to why he sent the Memo to County Administrator, Mr. Huckelberry without consulting the Commission first in regards to utilizing Hearing Officers. He suggested that a meeting could have been called to discuss the issue and make a decision.

Mr. Eckstrom asked for clarification of Commission procedures. He questioned whether the agenda items were in the purview of the Commission.

Discussion and explanations ensued by Mr. Freund and Mr. Hellon that conducting hearings is within the Commission's purview, in that it is a quasi-judicial independent Commission. Mr. Hellon objected to any attempt by Pima County Administration to tell the Commission how to do its job.

Mr. Eckstrom inquired about the RFP process. Discussion was had to re-direct the discussion to agenda item #1.

Mr. Fink explained he and Ms. Bohland had discussed the possibility of using Hearing Officers in certain situations where a quorum cannot be set in a timely manner. There had not been any discussion as a Commission, whether or not that was something viable to do, but possibly on a case-by-case basis.

Mr. Fink provided that the Commission has never scheduled a Hearing Officer to hear an appeal in the last nine (9) years. Prior to that time, there were hearing officers. Mr. Fink acknowledged that Mr. Hellon was a Hearing Officer in the past on at least one occasion, if not more.

Discussion ensued whether discussion of hearing officers was an appropriate agenda item for discussion by the Commission.

Mr. Freund asked Dan Jurkowitz, Pima County Attorney, for his legal opinion. Mr. Jurkowitz declined to comment.

Mr. Fink continued to question Mr. Burke about why he had not approached the Commission prior sending his memo to Mr. Huckelberry.

Mr. Burke explained he is employed by the County through Mr. Huckelberry and he would not approach a Commission prior to getting direction from Mr. Huckelberry. Mr. Burke discussed his concerns regarding scheduling of hearing for the upcoming months and the delays in having those hearings heard.

Mr. Fink explained that setting a hearing is effected by the Commission members' availability, the Commission's Attorney, Appellant, Appellants' Attorney, the County Attorney, County Attorney support staff, Respondents Representative, witnesses and hearing room availability. Mr. Fink provided that eliminating a quorum in favor of a sole Commissioner as a Hearing Officer would not make it easier to set a date if all the other players were not available for the hearing.

Mr. Burke stated that one of the suggestions made was the Commission set specific dates once or twice a month. This way everyone would know what dates were available. He likened it to the Board of Supervisors, who meet twice a month and anybody who appeals to the Board knows the specific dates they would be available. If they parties are not available the standard process would be to file a motion to continue which could be granted relatively easy.

Mr. Fink also explained that as the Chair of the Commission, he is required by County Policy to sit on the Public Safety, Corrections Officers, and County Attorney Investigators Retirement Boards. Mr. Fink discussed reasons as to why two (2) prescheduled days a month would not solve the issue as sometimes there are no appeals filed for long periods of time, causing cancellations of hearings, and the need to accommodate Motions to Continue.

More discussion ensued.

The possibility of a Hearing Officer was discussed. The Commissioners expressed their individual opinions of a quorum versus a hearing officer and whether they would serve as Hearing Officers. Other than Mr. Hellon, the consensus of the Commissioners is that they would not be willing to sit in the capacity of a Hearing Officer.

Mr. Hellon and Mr. Eckstrom suggested setting a threshold, such as any discipline under a two-day suspension could be heard by a Hearing Officer, anything greater must be a quorum.

Mr. Fink explained to Mr. Burke that they are all volunteers and that it takes a lot of time and effort to do what they are doing for the County and its employees.

ACTION: Mr. Eckstrom *moved that, the Commission continue with its hearing process but, that it explore parameters where a Hearing Officer could be designated. Where a Commission member volunteers to be a Hearing Officer that it be done, and consideration be given to the support that has to be given to that Hearing Officer in rendering his decision, such as preparing reports and at the same time recognizing that a decision has to come back to the Commission for ratification.*

ACTION: Mr. Hellon seconded.

ACTION: Discussion

Eric Cervantes, Pima County Deputy Sheriff's Association President, identified himself and asked to speak on the matter before a final vote taken. Detective. Cervantes stated the Associations would like to have some input on the Commission moving forward from a quorum to a Hearing Officer. He stated that the PCDSA is in favor of having a quorum over a Hearing Officer. If the Commission moved forward with a Hearing Officer, some thresholds the Associations would like considered are:

- a) Can the Appellant or the Respondent make any objections to an Officer?
- b) Should it be an anonymous decision whether or not a particular appeal is going to be something very simple (one day) versus complex?

Mr. Cervantes requested if the Associations could provide some input on how to move forward with those guidelines.

Mr. Fink stated the Commission would definitely want that input.

ACTION: Mr. Eckstrom amended his motion to include Det. Cervantes issues.

Mr. Freund questioned whether any Appellant could object or only law enforcement or corrections officers?

Mr. Fink reiterated that the suggestion from the various employee organizations that appear before the Commission/Council were to be asked for their ideas on what they think might work.

There was discussion about not knowing prior to an appeal whether it was a complex case.

ACTION: Motion called to vote.

ACTION: Roll call:

- Mr. Fink No
- Mr. Freund No
- Mr. Hellon Aye
- Mr. Eckstrom Aye
- Mr. Rubin No

ACTION: Motion failed 3-2.

Mr. Fink stated if there is a delay in establishing a quorum he would be disposed to ask Mr. Hellon to appear as a Hearing Officer. That delay would have to be in the inability of gathering a quorum, not because the Appellant asks for the continuance, or their attorney or if the witnesses are unavailable, which he stated was beyond the Commission's control.

The Commission recessed at 2:39 p.m. and reconvened at 2:51 p.m.

The Commission reconvened and began the discussion of **Item D, #2: *The term/pending expiration of the contract of Barry M. Corey for legal services, advice, and representation for the Merit System Commission/Law Enforcement Council preferences regarding its legal counsel and the role, if any, of the Commission /Council regarding any possible new Request(s) for Proposals to be utilized by the Pima County Procurement and /or Human Resources Department(s).***

Mr. Fink discussed the process that was implemented in 2016 in choosing the Commission attorney. A Motion was signed by the Commission in 2016 that was forwarded to the Board of Supervisors and at that time Supervisor Elias felt the Commission should have a voice in who was selected as the Commission's attorney.

Discussion ensued.

In 2016, Mr. Corey was selected as the Commission's attorney and awarded a 5-year contract. It is now at the 3 year benchmark and the Commission is not sure as to why this is going to RFP in the middle of the term of the contract. Mr. Freund questioned Mr. Burke if and why this was going to RFP.

Mr. Burke explained the contract procedure with Pima County Procurement. This is a one year contract with up to four (4) one year renewal options. It is the process to review contracts every year and this one has come up for review and County Administrator has asked for an RFP.

Discussion ensued.

Mr. Hellon read a statement into the record. (Statement attached)

Discussion ensued.

Mr. Freund suggested drafting a memo to County Administrator Mr. Huckelberry to meet with the Commission or find possibilities for having input on the decision.

Mr. Burke stated the County has asked for a Commission member to be a part of the RFP process.

Mr. Fink stated he would have a conflict and would hope that if any of the others served on the panel that they report back to the MSC.

Mr. Burke said all the proposals will be sealed bids and it is not a group discussion. There is no interview and all the law firms were versed in employment law and litigation is a component.

Mr. Freund questioned if there is a lawsuit, would one of the duties of the contract attorney be to represent the individual.

Mr. Burke clarified the County will represent the Commission as a body as well as individually.

Mr. Fink commented at this time there is no action and the Commission just wanted a voice on the attorney that represents them and to relay their concerns to the County Administrator.

Ms. Bohland suggested that while there was a quorum present they should provide their preferences for their role in the RFP process and what attorney qualification preferences to include in an RFP if permitted within the agenda item.

Discussion ensued.

Ms. Bohland asked the Commissioners to contact her if they would like to be on the panel.

ACTION: Mr. Hellon motioned to adjourn, Mr. Freund seconded, and the Open Meeting adjourned at 4:11 p.m.

The digital recording of the official proceedings and the minutes were prepared by the Recording Secretary.

Minutes approved on October 10, 2019.