

CHILDREN'S SERVICES COUNCIL OF PALM BEACH COUNTY

August 1, 2019, 4:30 p.m.

MINUTES – REVISED AFTER REVIEW

1. Call to Order

Chair Weber called the meeting to order at 5:03 p.m.

Present:

Thomas Bean

Kathleen Kroll

Melissa McKinlay

Debra Robinson, M.D.

Jose Luis Rodriguez

Thomas P. Weber

Excused: Donald E. Fennoy II, Ed.D.; Vince Goodman; Dennis Miles

A. Invocation – led by Chair Weber

B. Pledge of Allegiance – led by Chair Weber

C. Presentations

Chair Weber shared a welcome message to address Judge Kathleen Kroll's return to this Council.

Chair Weber congratulated Shelley Parker on her 10 years' service anniversary and other staff members for their several years of service.

2. Minutes

A. June 27, 2019 Council Meeting

A motion by Bean/McKinlay to approve the Minutes of the June 27, 2019 Council meeting as presented was approved by unanimous vote.

3. Public Comment – Agenda Items – N/A

4. Council Committees:

- Finance Committee
 - a. For informational purposes only; no action required:
 - i. Quarterly Investment Report – June 30, 2019
 - b. Approval needed:
 - i. Minutes – June 27, 2019
 - ii. Financial Statements – June 30, 2019

A motion by McKinlay/Rodriguez to approve the Finance Committee consensus to approve the items listed above as presented was approved by unanimous vote.

- Personnel Committee – N/A

5. Consent Agenda

1. Additions, Deletions, Substitutions – N/A
2. Items to be Pulled for Discussion – N/A
3. Adoption of the Consent Agenda and Walk-in Warrants List

A motion by Bean/Robinson to approve the Consent Agenda, and approve the Walk-in Warrants list, was approved by unanimous vote.

A. Program – N/A

B. Business

1. Warrants List – Approved by Consent
2. Proclamations – N/A

6. **Non Consent Agenda**

A. Business – N/A

1. Discussion of the Council's Role with Respect to the General Counsel

The question posed is whether to change our existing bylaws whereby the General Counsel is hired by and reports directly to the CEO as like all the other CSC employees. Our recommendation is that we make no change to our current bylaws, so that the CEO would continue to have authority to hire and terminate the General Counsel. We make that recommendation based on this procedure being consistent with how other large special districts of government operate. Both the Health Care District, as well as the South Florida Water Management District, operate in the same way we do with their General Counsel being hired by and reporting to the Executive Director or the Chief Executive Officer.

We were asked by a member of the Board to look at increased liability. There is, in fact, increased liability to the Board, although it is minimal. It increases any time you are having an employee reporting directly to the Board.

The other item to consider is that when our General Counsel decided to retire we looked at the position and looked at our three year succession plan that we had in place and the person that was going to be moving into the role and decided to look at her skills and abilities and wanting to have more focus on legislative issues. She has that background, so the position is now General Counsel/Chief of Legislative Affairs.

Given these reasons, that is why we are making this recommendation.

Comment: Dr. Robinson stated that it really disturbed her last month when she realized that the General Counsel reports to the CEO as opposed to the Governing Board and that the recommendation is not brought to the Board for ratification. This is completely different from

what she is used, because we received public dollars and we are under the Sunshine Law, which is operating like a private company. This seems like we are public but not quite public. That is why she is pushing back and why this is being brought forward.

Comment: Jose Luis Rodriguez, Esq. stated that he has looked into this issue and from his perspective he is comfortable with either approach (there were 3 options given), but not with the current approach. Based on his prior experience, he thinks the current approach is not appropriate. He would be comfortable with either approach, the General Counsel being ratified or reporting to the Council or if there is consensus, he is willing to join a consensus of a possible hybrid approach where at least the appointment of the General Counsel has to be brought up and ratified and received with an affirmative role of the Board and the Counsel will continue to report to the CEO. He thinks that because of the issues that a General Counsel addresses with the agency, it should come to the Board for some type of vetting, whether it's reporting to the Board or whether it's being confirmed by the Board and the CEO can decide if this position can be fired for cause, like a City Manager or City Administrator.

He likes the idea of having distance between the General Counsel and the CEO for the simple purpose that he is comfortable with all the players here but, as he says during negotiations, he respects that he is comfortable with this now, but he doesn't know who will be seating in that chair in the future and if he will be as comfortable with them.

Q: Chair Weber asked for clarification from Jose Luis Rodriguez, Esq. asking if he is bringing an option to consider as a variation of the recommendations.

A: Jose Luis Rodriguez, Esq. stated that he prefers option 3 but he is willing to compromise and join consensus for option 2 if that is the Board's agreement. He doesn't like the current system of being strictly hired and fired by the CEO because of the nature of this issue.

A motion by McKinlay/Kroll to approve a bylaw change to include the need for ratification of the hiring of the General Counsel and termination to be decided by the Chief Executive Officer was presented.

Q: How does that impact the current hiring? Would this be for future hiring?

A: It depends on when you have this go into effect.

Q: Technically, this person has been announced but not appointed, right?

A: Officially, she takes the position 50% by August 15 and moves into 100% by October 1st, as there is a transition period that we have built into this plan.

Comment: Jose Luis Rodriguez, Esq. proposed to follow whatever works best administratively. We either make this change effective immediately so that the new General Counsel has to be ratified by the Board, or if that is not an option time wise, that we delay the appointment of the new General Counsel by a month or two so that if the bylaws take effect in October 1st, then at that time it would be confirmed. If willing to make this change, the next person will be here for 20 years and he thinks this change should come to the Board and the Board should have an opportunity to speak to that person individually and assess that person for themselves and confirm or not confirm. He would reserve the right to talk to the candidate that is being proposed for ratification.

Comment: Thomas Bean stated that in that regard, he would be in opposition to this change. He is ok with changes for the future because everything has followed according to the current bylaws, there was transition and succession planning and from everything he can tell has been done correctly and properly and with great thought. He thinks there should not be a delay that could impinge on that and opens up the Council to other issues. He has no issues from changing the bylaws to make that change to option 2 moving forward. He has concern making this change retroactive.

Q: Jose Luis Rodriguez, Esq. asked if there is anything in the current bylaws that prevents us from making what we vote on this change today to make in effect tomorrow?

A: That is correct.

Comment: If we make this change effective tomorrow, that person can be brought up in two weeks or four weeks at the next Council meeting for ratification. It doesn't change the process, the transition remains the same, that person if confirmed and would transition. His concern is that there is low turnover at the CSC. People at the Executive positions stay here for 10, 15, 20 or 30 years. If we are not going to get a chance to weigh on this appointment, why make the change? It could be a decade before we get to weigh in. His proposal is that once this becomes effective, upon ratification, the person is brought into transition.

Comment: Commissioner McKinlay stated that as the maker of the motion, she would not be willing to do this as suggested by Jose Luis Rodriguez, Esq. The motion would be on appointments moving forward. The woman who is taking this position was announced at a meeting and we all had an opportunity to voice our concerns and nobody voiced any opposition to that appointment. She is supposed to come on board later this month even if it's in a part-time role and we missed the boat. Her motion still stands as option 2 on all appointments moving forward, not to the current appointment that is coming on board later this month.

Judge Kathleen Kroll stated that she withdraws her second if it's not as the Commissioner stated. She agrees with approving changes to the bylaws moving forward.

Q: Have we had a conversation with the Florida Commission on Ethics? What about other CSCs throughout the state, are they structured in the same way?

A: Other CSCs have contracted out with costs of the smaller CSCs between \$12,000 – \$250,000 and they report to the Board. They are contracted outside, so they are not employed by the CSCs.

Comment: Dr. Robinson's issue is not about the individual. She thinks the process is messed up. She already had a conversation and doesn't want to get into details of how she thinks this is wrong. This procedurally needs to be repaired. She agrees because we need to ratify the person that is coming forward. She has never seen the Council vote against a recommendation from the Executive Director. Procedurally, she will not support the motion on the table. We need to ratify the person who will be stepping in the role if only procedurally. She believes she saw something on the Commission on Ethics or the Florida Bar rules that she still has not received in writing and it's about attorneys reporting to Boards. She knows that none of us here are experts in this area and we need to at the bare minimum ratify the person walking into that position and even after we do that we need to ask a higher authority about this.

Thomas Sheehan, III, General Counsel stated that there is a provision in the Code of Ethics for government lawyers essentially with outside law firms that deals with conflicts. To his knowledge with respect to the Code of Ethics it would apply to the General Counsel, as it applies to all the employees. To his knowledge, there is nothing that the Commission on Ethics would be able to provide to the Council and he has never seen them give an advisory opinion in effect of what they consider best practices for this.

Q: Have we spoken with the Florida Commission on Ethics?

A: No, we have not asked them.

Comment: Dr. Robinson wants to know that her concern is hyperbolic. She needs to know from a higher authority or from a person who lives in that world what the relationship between the General Counsel and the governing board and CEO ought to be. There is nobody in this room that has the expertise to tell her that.

Comment: Jose Luis Rodriguez, Esq. stated that in terms of the liability of the General Counsel reporting or not reporting to the Board and if it reports to the Board it slightly increases liability, at the end of the day, if something happens, it will be everyone on this table, including the Executive Director, that will be sued. No one is ever going to say because the General Counsel reports to the CEO I am not going to name the Board members in the lawsuit, so that issue to him is not an issue. The other issue is that again, nothing against the candidate that was mentioned to be General Counsel, not reflective of Lisa's leadership, not reflective of Tom's abilities as General Counsel, one of the issues that presents is that under the right circumstances, a General Counsel independence could be impaired when you have a General Counsel who is reporting to a CEO and who may have advice that conflicts with the CEO's preferred option and not having an escape valve of reporting to the Board. You would think and you would hope that a General Counsel would take their ethical obligations more seriously and if they conflict with the CEO, do something about it, but when you report to your boss it's very difficult, especially at the Executive level, to say no to your boss, so that is one of things that weighs in favor of option 3, but option 2 is a little bit better.

Comment: Thomas Sheehan, III, General Counsel, stated that with respect to liability, he would agree in terms of the initial suit, since probably all Council members would be named, but given the process that we have, he believes we could get you out of the lawsuit fairly quickly. Regarding the issue of liability, he did go to our employment lawyer to discuss this with him and what you are seeing in the agenda is the employment lawyer's opinion on this. That was his belief too, but he is not an expert in this area, so he reached out to verify that.

Comments: Chair Weber clarified that we have the motion from Commissioner McKinlay and second by Judge Kroll to approve option 2 with the clarification that it will be effective moving forward and it would not affect the current change to the General Counsel position.

A motion by McKinlay/Kroll to approve option (2) presented by staff was approved by four members. Debra Robinson, M.D. and Jose Luis Rodriguez, Esq. voted against.

Discussion took place clarifying that a majority of the Board is needed to change the bylaws.

A motion by McKinlay/Weber to reconsider this decision was approved by five members. Jose Luis Rodriguez, Esq. voted against.

A vote on the original motion to approve option (2) going forward was approved by five members. Jose Luis Rodriguez, Esq. voted against.

Dr. Robinson wanted the record to show that she only changed her vote because even this option is better than what has existed.

B. For Informational Purposes Only – N/A

7. Walk-In Items – N/A

8. Chief Executive Officer's Report

Discussion on a request to create a process whereby individual Council Members could submit questions on agenda items and have them answered prior to the Council meetings.

We had a process whereby when a question was asked if the Council member wanted that information shared, we included it in our CEO Report. There was a request to share information about agenda items out to all the Board members prior to the meeting. We have created an email address: Agendaitem@cscpbcc.org and any questions specifically related to an agenda item on the packet will go to Tom, Lisa and Elsa so we will be able to get that information, send it all out to the Board before the next Board meeting. If in the rare occurrence it comes in too late or it takes a little longer to gather that information, we will make sure that that information is brought to the Council meeting before there is a vote on that agenda item, but we don't feel that is going to happen very often.

Q: Dr. Robinson, you requested this information, would this process satisfy that?

A: Yes.

The idea is that as questions come up, when you get the answers, that may prompt more questions, so we will have that dialogue of forwarding the answers by blind copying everyone to ensure that there is no back and forth and we don't move into Sunshine violation.

Q: Will the answer go only to the Council member that asked the question?

A: No, it will go to everybody but then you all won't be able to reply back and forth.

Comment: Jose Luis Rodriguez, Esq. stated that his only concern is that with any of the questions, when we share the answer with everyone you might be tipping the hand of that Board member that may be leaning on an item and we have to be careful with this. He feels more comfortable with a member asking a question and your answer only to that member.

Comment: That is how the School District has been operating for decades.

Comment: Commissioner McKinlay stated that if it's a question that all of the members of the Board are asking, maybe something was missing from the agenda item. She is not comfortable with this idea.

Comment: Jose Luis Rodriguez, Esq. stated that he doesn't care who asked the question, he does not want to be copied on the answer. If he has his own questions, he will ask.

Comment: Lisa Williams-Taylor suggested that we have the questions asked brought to the Council meeting.

Comment: Commissioner McKinlay stated that she doesn't want to get the questions before the meeting and suggested that the questions are not emailed out as part of the packet.

Comment: Jose Luis Rodriguez, Esq. stated that we should have extra copies of the answers at the Council meeting in case someone in the audience is interested in seeing them.

Comment: Lisa Williams-Taylor stated that we will get the answers to whoever asked that question and then we bring the collection of the questions and answers to the Council meeting or we can have Council members asked those questions at the Council meeting.

Comment: Thomas Sheehan stated that distributing these at the Board meeting works. Board members would have them at their seats.

Comment: Commissioner McKinlay stated that if she would have a list of all the questions everyone asks before a Commissioners meeting, there will be no time to hold a Commissioners meeting. She likes the idea of having a central location to send the questions so that the CSC team can see it all at once, but she thinks this adds an extra duty to staff and that it is not necessary.

Comment: Debra Robinson, M.D. stated that this is about transparency. For the School District, they have questions attached to the agenda, so you can see all the questions that have been raised.

Comment: Jose Luis Rodriguez, Esq. stated that maybe this works, but the General Counsel should state if this works.

Comment: Debra Robinson, M.D. stated that her intention is to have the questions being part of the record, it is not intended to have a conversation outside of the Sunshine Law. Each of us has different views, so this would be something that would provide us with the opportunity to see something that I would not see, so if a member asks a question it can make another member stop and think differently.

Comment: Jose Luis Rodriguez, Esq. stated that the more he thinks about this, even posting it as part of the agenda, may still be an issue, but he refers to the General Counsel for his advice.

Comment: Thomas Sheehan stated that we don't have the same system as the School District has to be able to do that. They have a very sophisticated agenda system. We post the agenda and he doesn't think there is a way to post these questions publicly. What he is hearing is that the Board in general would not get these. There will be a uniform place you can send your questions and individually you would get the answers and it's up to the Council member when an issue comes up whether you want to raise a question and get answer or not.

Thomas Sheehan recommended that it does present the potential for violating the Sunshine Law because of court decisions normally you can't have communication between Board members outside a public meeting. There is provision that allows you to send something in writing to all the Board members and you can do that, however, they cannot respond. The system of questions and answers, though, he thinks opens up real possibilities of a conversation in effect going back and forth.

Comment: Debra Robinson, M.D. stated that we can blind copy members of the Council so that they cannot respond to that.

Comment: Thomas Sheehan stated that if we can see the answers and that generates another question, that is where there is a potential of violation.

Q: Is this referring to when Council members questions are sent to everyone, or is it a request for a clarifying question that came in and we are sharing the response? These are very different things.

A: Debra Robinson, M.D. stated that her intent is two pronged. To limit the amount of time spent asking questions and secondly to make that information shared.

Comment: Thomas Bean stated that he doesn't see any need for sharing because Council members have individual questions sometimes based on personal interests. Usually the answers are shared as a follow-up.

Comment: Debra Robinson, M.D. stated that her point is that we tend to operate in a more isolated fashion than what she is used to.

Comment: Would we be comfortable with questions coming in and we send the question directly to the individual that has asked the question? Do we feel comfortable with providing the list of questions and answers and having them available to individuals at the Board meeting?

A: What is the difference if a Board member calls the CEO directly and asks for a specific piece of data? Judge Kroll stated that she is not in favor of this.

Comment: Lisa Williams-Taylor stated that in the past, when a Council member asks a question, we include it in the CEO Report if they ask it to share with the Board.

Q: Is this a question that is asked at a meeting?

A: No, an individual asks a question and I ask if they want to share with the other Board members and if they say yes, we include it in the CEO Report.

Comment: Jose Luis Rodriguez, Esq. stated that we should present questions at the Board meeting as part of the discussion. He thinks it creates a grey area and that is when you get in trouble. He agrees with transparency, but getting the questions at the Board meeting, if there is any possibility that it could tip a decision, he is very sensitive to this and he would rather not do

it. It may mean longer Board meetings, unfortunately, but that is the purpose of discussions during a motion.

Comment: So, we will make the email address for questions available. Elsa will send it out when we send the meeting invitations. For the Board meeting, this will be embedded within the email so that it is easy to know if you have a question, where to go to post it. It will come to Lisa, and she will respond directly to the individual asking and then it will be up to each individual or Board member to bring those questions forward if they feel that that is something that all members need to hear before a vote is taken.

Comment: Debra Robinson, M.D. wanted to make sure that she is clear that she is the only Board member that thinks that everybody should get that information at some point in time. She wants to see what other Council members see. She learns from others and clearly she sees some things and others see other things. She thinks it's good to have collective thought and she doesn't think it violates the Sunshine Law. The School District also gets hard copies of the Q&As before the meeting, and it is posted electronically and she doesn't see why it can't be posted electronically here even though we don't have the same system.

Comment: Chair Weber stated that he thinks differently and enjoys that in our meetings when people have questions, they are discussed in our meetings and if there was a question and a request of data, we would get that data as part of being prepared for the meeting. Asking ahead of time so they are prepared to present to your question at the meeting is very beneficial but to have a full list of questions or issues would make us have very long meetings.

Outreach Media

Q: Debra Robinson, M.D. asked regarding media outreach, if there is any specific outreach for the African-American population? She sees Creole and Spanish.

A: John Bartosek stated that a number of the radio stations that are in the Hubbard Media Group have a break-down of African-American audiences. He doesn't have this with him today but those radio stations do have metrics and they count African-American audiences, as well as Hispanic. Christine Potter stated that Hubbard Media Group has X102.3, which is primarily an African-American urban listening station, as well as BEATS.

Every station has very unique listening audiences and we can bring a break-down of each.

A: Debra Robinson, M.D. stated that our data shows the population that we most are trying to improve the circumstances are for African-American. The outreach doesn't tell her that.

9. Legal Reports

Thomas Sheehan reminded everyone that we have our TRIM hearings and Council meetings in September. The first one is September 12, the Council meeting that day will be at 4:30 pm and the TRIM hearing at 5:01 pm. The second is on September 19 with the TRIM hearing at 5:01 followed by a very short Council meeting. Also, on September 12 we will have a PPC meeting. The reason we changed the date on the second meeting was to get at least 6 members without the Judge, who cannot, by statute, vote on the millage. In the event that we suddenly get a phone call that the Governor has appointed somebody who would be unable to attend the TRIM hearing, that would move our quorum

from 5 back up to 6 and we didn't want to take a chance for that to happen and us not having a proper quorum to vote.

10. Public Comment – Non-Agenda Items – N/A

11. Council Comments

Commissioner McKinlay congratulated Lisa Williams-Taylor on her selection to join Leadership Florida.

12. Adjournment

The meeting was adjourned at 5:58 pm.



Vincent Goodman, Secretary



Lisa Williams-Taylor, Ph.D., Chief Executive Officer