

**SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN**

June 30, 2008

5:30 PM

Mayor Guinta called the special meeting to order.

Mayor Guinta called for the pledge of allegiance, which was led by Alderman Domaingue.

A moment of silence was observed.

The Clerk called the roll.

Present: Aldermen Gatsas, Sullivan, J. Roy, Osborne, Pinard, O'Neil, Lopez,
Shea, DeVries, Garrity, Smith, Ouellette, Domaingue

Absent: Aldermen M. Roy

Mayor Guinta stated the purpose of this special meeting is for discussion relative to a personnel matter; before we begin a motion would be in order to recess the meeting to meet with legal counsel pursuant to RSA 91-A:3(II)(a).

Alderman J. Roy moved to recess the meeting to meet with legal counsel; the motion was duly seconded by Alderman Pinard. There being none opposed, the motion carried.

Mayor Guinta stated the Board will be in recess for about ten minutes.

Mayor Guinta called the special meeting back to order.

Mayor Guinta stated thank you all very much. The purpose of the meeting, as I stated earlier, is to deal with a personnel matter relating to one of our employees of the City of Manchester. The employee has request that this meeting be held in public which is the right of the individual. I would like to it noted for the record that the individual has made the request to have this public and speak to the Board. The individual in question is Carol Johnson and from what I understand she has retained counsel and is being represented by Mr. David Nixon and his law firm. The reason that I am here is to convey to the Board of Aldermen actions that I have taken, based on information that came to my attention last week. Early last week it came to my attention that there have been allegations that an individual in the Clerk's office stealing money. The individual's name was provided to me; there was a description of the allegations. That was, under my direction, immediately conveyed to the Police Department, so the first time the Police Department was notified was sometime last week. The individual is no longer an employee of the City so in consultation with our solicitor it is okay for me to provide the name of that individual and that individual is Shawn Hanagan. It appears that sometime prior to February 29th it was identified that small items of cash, small dominations of cash, were being stolen from Alarm Registrations. It was conveyed to me that no action was taken by the Clerk's Office; there was no investigation that had been required; there was no notification to any department, no notification to my office or to the Police Department, and by all indications it appeared that it was handled internally. This also came to my attention that the individual in question, Mr. Hanagan, is the nephew of Carol Johnson. After this was reported to the Police Department they conducted an initial investigation. The Police Chief meet with me for a specific reason only to share with me the concerns that he had base on where the investigation was at that point. It is standard policy and practice that the Chief or any member of the Police Department does not share with me specifics of investigations and they have not in this situation. The only reason that there was contact between the Police Chief and myself this week was

because of the express concern by the Police Chief for concerns regarding the collection of evidence relating to the case against Mr. Hanagan because of the nature of the relationship between the City Clerk and the individual being investigated by the Manchester Police Department. He then informed me that he had a duty and a responsibility to inform the Attorney General's office of what was known, based on the fact that there was an officer of the City involved and this had been referred to the Office of Public Integrity within the Attorney General's Office for investigation. Last week it was stated to the Police Chief that an investigation by the Attorney General's Office will ensue of Carol Johnson regarding the alleged accusation. At that point I had met with City Solicitor Tom Clark as well as Human Resources Director Jane Gile to discuss the issue to determine what is the most appropriate action that I need to take as Mayor. As everybody knows the administrative responsibility that I hold requires me to deal with personnel issues; however, because there is an officer of the city involved I am also required to notify this Board of the issue. After consultation with Tom Clark and Jane Gile I did brief the Chairman of the Board late last week and we had an ensuing meeting on Friday, the Chairman of the Board and I, as well as Tom Clark and Jane Gile. Again on Friday afternoon I had a more than two hour meeting with Jane Gile and Carol Johnson to talk about the specific allegations that were brought to my attention, and after the meeting that we had, I made a determination based on the information she provided to me that the most appropriate step for me to take was to place Ms. Johnson on administrative leave with pay until further notice. I took that action for several reasons. First and foremost, the concern expressed to me by the Police Chief that the integrity of collecting evidence could be a concern based on the nature of the relationship between Carol Johnson and Mr. Hanagan. Secondly, I expressed my concern that when this was brought to her attention, and she did acknowledge that this was brought to her attention, in my opinion; well, it is actually fact that it was not reported to any entity. It was not reported to the Mayor's Office, the Solicitor's,

the HR office or the Police Department. The third reason is that there was no internal investigation demanded by Ms. Johnson which I thought was again another item that should have been done; she conveyed to me that there were some policy changes that were made within the office but no complete investigation. But finally, the employee in question was allowed to continue to remain employed by the City of Manchester in the Clerk's office until he served notice and had his last day of April 18th. Based on those reasons, I conveyed to Ms. Johnson that I thought the most appropriate action for me to take to place her on administrative leave with pay. I stated to her that we would be having this meeting, and I would convey this information to the Board of Aldermen, and that she under the Charter has a right if she so desires to have the meeting in public. That information or that request was made by her legal counsel, so we have made this a public meeting. Ms. Johnson has also requested to make a comment or statements to the Board of Aldermen. I have no objection to it; she has a right to it; and without objection from the Board I would ask her and her representatives to come forward and make their statement at this time

Attorney David Nixon stated thank You Mr. Mayor and members of the Board of Aldermen. My name is David Nixon and I have the honor of representing Carol Johnson in this proceeding along with my partner Larry Vogelmann who was going to pitch for me for the reason that I have been on vacation in Maine as of last Friday but I came back today for this proceeding. Our procedure very simply will be that I will swear Carol so that she will testify under oath and answer the brief questions directed to the essential elements of the situation. Our goal is to persuade you that it is in the best interest of the City that she not be placed on administrative leave, with or without pay, because the City needs her serving as City Clerk and she has done nothing and the Mayor has admitted to her that she had done nothing dishonest in any way, shape or manner, and so she should be, in interest of the City, allowed to remain in office because an indefinite suspension is

worst than being terminated forever which would require a hearing, due process and due notice, because the suspension would provably last as long as one of the three investigations ongoing. I understand there are three: an internal one by the City, another one by the Manchester Police Department, and a third one at the request of the Mayor by the Department of Integrity of the New Hampshire Attorney General's Office. And this could be a year of Sundays before they are all completed. In the meantime the City is without a City Clerk who has experience and 30 years of dedicated service to the City. With that background I would request that she be allowed to testify under oath in response to brief questions relating to the incidence in question.

Mayor Guinta stated this proceeding is actual not a hearing. It is a special meeting for the Mayor to advise the Board of Aldermen of the actions that have been taken to this point. We did meet with legal counsel and we are more than willing to allow Ms. Johnson or her representatives to make a statement, but because this is not a hearing we will not be accepting sworn testimony and examination. We feel that type of examination is not appropriate for this kind of meeting.

Attorney David Nixon replied with due respect Mayor, I think she is entitled to testify under oath. Whether or not I am allowed to question her is another question. But I do think she is entitled to testify under oath which she desires to do. I think it important for this record to be accurate in that regard.

Mayor Guinta stated that this is not a hearing, this is not deposition, and this is not a court room. This is a personnel matter that has been request to be made public, and that is every right that the employee has, but the wishes of the Board of Mayor and Aldermen is that the sworn testimony be not given and that that type of examination is not appropriate, and that is the will of the Board of Mayor and Aldermen.

Attorney David Nixon replied that may I respectfully object to her not being allowed to testify under oath and not being allowed to have her counsel question her so as get at the merits of the situation as quickly as possible.

Mayor Guinta stated so noted for the record.

Attorney David Nixon replied thank you.

Carol Johnson stated good evening Mayor and Board of Aldermen. I appear before you tonight in a difficult position certainly for the Board and myself and basically wanted to address to you perhaps some of the reasons why I took the actions that I did. The office at the time, as you all know I believe, was under a great deal of duress in terms of staffing. We were still down about six positions. I felt after we had done some internal examination and discussion that the funds that had been taken had been restored. It was my feeling that we could deny access to cash to that individual, that we could terminate the individual with the understanding that the individual would be terminated, but also allow us to have the capacity to have someone in the office doing the physical work that needed to be done. It was my thought process that the Mayor would hopefully be releasing a similar position and within a 30 day period we would have the position filled. The person that left before that position started. It was pretty much one left and the other came in the door. The policies were changed. I don't believe that there were any further liabilities to the City and I believe that if we do not have a City Clerk that it puts a cloud on the office for the staff. I think in a Presidential year it is a very difficult time for us. It is one thing to plan to leave an office for a vacation for a couple of weeks. You have an opportunity to plan things out. We are not in that position at this point so there is much that has been left in limbo. The office is in need of two managerial staff at least in my opinion for signatory purposes. I

believe that it will put more duress on the staff, and the staff has been through a whole lot in the last six months. I was not responsible for the hiring of this individual in the first place. Shawn, albeit my nephew, at the time it was not my decision to hire him nor did I take in that process. It was definitely not my recommendation to hire him nor did I ever suspect that he would be suspected of doing what he did. There were other issues that came into play there, but I did not participate in that process. I truly believe that there are so many functions and activities in that office that it is harmful to the citizens and employees of that office to not allow me to go back. I would welcome investigations. I indicated that to the Mayor before I realized that there were investigations ongoing, that the doors are open to the City Clerk's office for that to occur and certainly into my personal background if the Attorney General so desires to do that. I don't want to belabor the situation and make it any more difficult for anyone else sitting in this room this evening, including the public, so I think I will close my comments with that. I think you are all well aware of many of the functions and activities that go on, that we are here covering meetings, that we have a Presidential ongoing, and beyond that I can't really address more than that this evening without my counsel saying you need to wait.

Attorney David Nixon stated Mr. Mayor, she has indicated that she would be pleased to answer questions from you or any or all of the Aldermen or from the City Solicitor.

Alderman DeVries stated I am not wishing to ask any questions. It would be a few, Your Honor, and there probably are a couple more questions I would have of our counsel before I am asked to make a decision. I am hoping that there is that opportunity for us to meet again in non-public session to air out any questions we have before you call for a vote.

Mayor Guinta replied because Ms. Johnson has requested this to be public, the only reason that we could go into non-public is for specific legal questions that we would have of the Solicitor. So if there is a legal question we certainly at the appropriate time would accept a motion to recess again but anything else has to be discussed in public. If there are no questions at this time of Ms. Johnson or her team, I would be happy to answer any questions of you or any of the Board member may have.

Attorney David Nixon stated may it please the Mayor and this Board, I would only like to say in closing, that again I emphasize...and I have been through this with a director of Fish and Game, a director of Probation and a football coach, and indefinite suspension with or without pay is tantamount to a complete discharge, which cannot occur legally without notice in writing of charges and a full dress hearing. In effect, once she is no longer in the Clerk's office, her career, her reputation, her name and the functions of the Clerk's office will deteriorate and the longer she is out, and investigations go on and on has you know, the longer she is out the less chance there is that she will ever regain her reputation or the City will ever recover the services that she has dedicated to the City for 30 years. I have a compromise suggestion to make. I would suggest in the interest of the City that she be reinstated as City Clerk subject to an extended probationary period under the supervision of the Mayor and Board of Aldermen, perhaps through a select committee of three to whom she would report on a regular basis, say weekly. In the case there would be any question of which I am sure they would be none as to integrity of her conduct or that of the office, during these investigations. Thank you.

Alderman Osborne questioned could we take a vote on this particular item? I do not know how the rest of the Alderman feel about her being away or with the job that she has. Could we take a vote on that?

Mayor Guinta replied take a vote on what specifically, Alderman?

Alderman Osborne replied that she has to be put on leave with pay. If she is getting paid, she has been with the City 30 some odd years, and I think we owe it to her to at least give her a chance at her job. I think basically we should take a vote on this particular item that Mr. Nixon is talking about.

Mayor Guinta stated that I think it is appropriate for the Board to consider either voting to continue the administrative leave with pay, although you are not required to. I think it is also appropriate if you so choose to extend the current probation period that I believe ends today or tomorrow, which is a six month period. I think it is completely reasonable if you so choose to extend that for a certain period of time, but obviously the decision that I made to place her on administrative leave with pay was for very specific reasons. The intention that I have and would expect the intention that every member of the Board has would be obviously to honor their duty and responsibility and do so with dignity and respect for the individual that is before us. I think at the very least any employee of the City deserves that. But there are serious concerns that were raised to my attention that I think place serious question regarding the employee's level of judgment regarding how this issue was handled. . I feel very strongly that it is inappropriate to allow an employee to remain in service for an additional seven weeks once you as a department head or an official of the City is notified that money was being stolen from the City. I think it is very appropriate that an internal investigation should have occurred to determine if there are other dollars that have been stolen and what if any changes should be made, long term, to make sure this does not occur in the future. I think that an officer particularly has a duty to disclose when someone is stealing from the City, and again that was not done either. I also think for the early reason that I stated, that the Chief of Police expressed specifically to me last

week the concerns about chain of evidence, that administrative leave with pay is appropriate. There is a police department investigation of Mr. Hanagan; there is an investigation of Ms. Johnson by the Attorney General. I think it was stated that that was at my request. I would like to state for the record that was not at my request; that was the Police Chief determining, because of the involvement, he had a duty to disclose to the Attorney General. The Attorney General immediately made a decision that it does fall within the purview of the Attorney General's Office and the Office of Public Integrity. I did order Kevin Buckley, our internal auditor, to perform an internal audit, first to determine administratively if there are additional dollars that he could identify that have been stolen and what, if any, additional changes need to be made in that office to insure this kind of activity does not occur again. It is an unfortunate situation for the City. I think that this Board needs to act with the upmost integrity and professionalism. As Mr. Nixon has so eloquently stated we are talking about somebody's reputation, but I also feel that the City's reputation must be honored as well and we need to state to the public that we have certain expectations of our department heads and particularly our officers. I feel that those responsibilities have been at the very least seriously betrayed, and I felt I was in no position other than to make the decision, and the very difficult decision, to place Ms. Johnson on administrative leave with pay. If another...again because she does have reporting responsibilities to the Board of Alderman, whatever the will of the Board is, can occur this evening. I do think it makes sense to let the investigations continue, but I think keeping the administrative leave with pay I think at this time is appropriate.

Alderman Osborne stated basically I think 90% of us here as Alderman don't even know the whole story. Innocent until proven guilty. I think Ms. Johnson has been with the City for over 30 years and in all those years there has been nothing. I think she tried in her own way to protect her department in whatever way she

could at the time but I still say she is getting pay and she is needed there. *I still say I would like to make a motion for a vote on that particular issue.*

Alderman Lopez stated thank you Your Honor. I need a clarification in reference to...we are going to extend her probationary period I believe you use that; six months to go to a year?

Mayor Guinta replied yes, I think that is a reasonable...I have no objection in extending the probationary period for the employee, and if the will of the Board is 30, 60, 90, or 120 days I would have no objection to that.

Alderman Lopez stated that I do have Ordinance 33.047 that we have the right after six months to extend the probationary period and I therefore request that we do.

Mayor Guinta stated the motion is to... because the individual was promoted in January to the Office of City Clerk, with that came a six month probationary period. That ends tomorrow, approximately today or tomorrow. The maker of the motion is asking just to extend that probationary period. That is not changing the current status of the administrative leave with pay.

Alderman DeVries seconded the motion to extend the probationary period. There being none opposed, the motion carried.

Alderman Osborne stated it is up today or tomorrow. Does that make any difference? Does the City Solicitor have anything to say about that?

Mayor Guinta replied I was being approximate so I wouldn't make a mistake.

Alderman Osborne stated, I understand, but that would not have nothing to do if we extended it, regardless if it was yesterday.

Mayor Guinta replied no, but it was just extended for six months so she has an additional six months from her promotion date. Her promotion date was I believe January 1st or January 3rd.

Alderman Lopez stated he just wanted to clarify so that the Aldermen...the six months is in the ordinance that we can do it; it does not mean afterwards it could be three months or two months to take her off probation. I think everyone is innocent until proven guilty, so that is the main reason.

Alderman Osborne stated that is what I say.

Alderman Domaingue asked is there a time frame for the completion of these investigations?

Mayor Guinta stated that it is very difficult to determine how an investigation would ensue; it has not been conveyed to me how long the investigations would take. Obviously we would hope and expect the investigations would be done thoroughly and expeditiously, and my intention in my decision to place her on administrative leave was to provide the information to the Board. I hope if the Board so chooses to continue with that recommendation and that decision, once you have time to digest the information and see what transpires with the investigations you can make a decision at that time.

Alderman Domaingue stated I assume this is an issue we as a Board can address on an ongoing basis.

Mayor Guinta replied yes, at any time.

Alderman DeVries stated a question of the Solicitor if I could...Would it be the Solicitor's recommendation that the probation as indicated stay in place until all three investigations that could be expiring at this time. Would you concur with the statement made by Attorney Nixon?

City Solicitor Clark stated I think it is appropriate for this Board to extend it. It was an original six month period; I think it is appropriate for this Board if we want to extend it, to extend it up to another six months. At the end of that time if things are still going on, this Board will have plenty of opportunity to discuss it further.

Alderman DeVries stated I apologize. I did not mean to say probation I meant to say administrative leave, that the administrative leave stay in effect until all three of the investigations are completed. It was a statement made by Attorney Nixon and do you concur it would be inappropriate for this Board to consider bringing Ms. Johnson back prior to rather still ongoing investigations at any level?

City Solicitor Clark replied that is a policy decision that this Board will have to make. I think when the Mayor placed her on administrative leave did so appropriately. I think that was an appropriate action. I think it is an appropriate placement at this point. The Police Department did express concerns about the integrity of the records in the office and the gathering of information.

Alderman DeVries stated additional question if I could...the Mayor's decision to place on administrative leave needs to have concurrence by this Board or can have concurrence?

City Solicitor Clark replied can have concurrence.

Alderman DeVries stated so we do not technically have to take a vote on this?

City Solicitor Clark replied technically no. The Mayor had the authority to do what he did. You may, but it's not required.

Alderman Sullivan moved to we recess for ten minutes to consult with legal counsel. The motion was duly seconded by Alderman J. Roy. There being none opposed, the motion carried.

Mayor Guinta called the meeting back to order.

Alderman J. Roy moved to concur with the Mayor's decision. The motion was duly seconded by Alderman Sullivan.

Alderman Osborne asked how long...do you have some kind of idea on how long and when this can come back? This come back again next month. This can come back again in six months. In the meantime as Mr. Nixon has pointed out that her livelihood is in justice here until proven if guilty. This is what bothers me the most, not knowing everything about the case. I am not trying... you had to do what you had to do Mayor. I am not against you. Don't get me wrong. I just had the feeling in me if I do not know exactly what is going on, what is going to happen what am I voting on?

Mayor Guinta replied the action that I took is administrative leave with pay.

Alderman Osborne stated I understand that part.

Mayor Guinta stated the motion is to confirm that. Obviously it is in everyone's best interest to resolve this as quickly and expeditiously as we can. I think it is in the City's best interest; I think it is in the office of the Clerk's best interest and I think it is in Ms. Johnson's best interest. So while I can't convey to you what specific time line we are talking about, this Board can convene at any time to discuss this matter. If and when this Board so chooses to convene, proper notification will be made to Ms. Johnson and she has the right to either have that in public or private. But my expectation would be that this would be done in a timely matter and in a professional matter and in a courteous matter.

Attorney Nixon stated point of order Mayor. Mayor please, Mayor and Board of Alderman, I do not recall that there was a vote on Alderman Osborne's motion that she be allowed to remain in office pending this completion of the investigations. The second point of order is that the letter dated June 27th from you to her was handed to us tonight. The third point of order is she did conduct an internal investigation with the department head involved and thought it was his suggestion that there be termination in 30 days. The fourth point of order I would make is by extending the probationary period without her remaining in office terminates her career in my opinion, based on prior experience in other situations and if that is the will of the Board that is the will of the Board, but that is what is going to happen.

Mayor Guinta stated on your last point I would disagree. This is an administrative leave with pay. There is some serious concern about the conduct of your client and we have an obligation to ourselves and the people of the City to act in the best interest that we feel is most appropriate. The letter that was provided to you was formalized to provide to you to insure that everyone understands what action I took on Friday. It was made verbally clear to Ms. Johnson obviously on Friday in the presence of the HR director, and obviously she understood what that

action was because she did retain counsel. The third point about the termination with 30 days, that is an issue quite honestly in dispute. There is no evidence beyond what has been stated by your client to suggest that there was a termination with 30 days, and I am more than willing to go deeper into that particular issue but based on the conversation that I have had with Ms. Johnson there is not sufficient evidence to suggest that that actually occurred. I do not recall your initial point of order. Oh, it was regarding Mr. Osborne's request. That was not in a form of a motion and it was not seconded; therefore it was not accepted by the chair.

Alderman DeVries stated Your Honor, a motion to table.

Alderman Sullivan stated the previous question had already been moved and put.

Alderman DeVries stated it has not been put yet.

Mayor Guinta stated it has been put and.....

Alderman DeVries stated the Clerk hasn't read it, so motion to table.

Mayor Guinta stated I am not accepting that motion; there is a motion on the floor and we are going to move forward with this motion.

Alderman DeVries stated I will appeal that to the Board.

Alderman Sullivan asked for a roll call.

Mayor Guinta stated a roll called has been requested by Alderman Sullivan on an appeal to the Board.

A roll call vote was taken.

Aldermen Osborne, DeVries, and Ouellette voted Yea. Aldermen Sullivan, J. Roy, Pinard, O'Neil, Lopez, Shea, Garrity, Smith, and Domaingue and Gatsas voted nay. *The motion failed.*

Mayor Guinta stated the original motion is on the floor.

*Deputy City Clerk Matt Normand stated the motion was made by **Alderman J. Roy** and seconded by **Alderman Sullivan** to concur with the Mayor's decision to place Carol Johnson on administrative leave with pay. The motion carried, with **Alderman Osborne** voting in opposition.*

*There being no further business, on motion of **Alderman Smith**, duly seconded by **Alderman Pinard**, it was voted to adjourn.*

A True Record. Attest.

City Clerk