August 22, 2016

The Common Council of the City of Glasgow, KY met in regular session on Monday, the 22nd day of August, 2016 at 7:00 p.m. in the Council Chambers with the following persons present:

HONORABLE MAYOR: Dick Doty

COUNCIL MEMBERS: Ben Bucher
Jake Dickinson
Brad Groce
Stacy Hammer
Wendell Honeycutt
Chasity Lowery
James Neal
Freddie Norris
Karalee Oldenkamp
Gary Oliver
Joe Trigg
Marlin Witcher

There being a quorum present, the Mayor declared the meeting open for business.

Pledge of Allegiance

Council Member Lowery opened the meeting with a prayer.

MINUTES OF COUNCIL MEETING ON 7-25-16

MOTION was made by Council Member Dickinson for the approval and adoption of the 7-25-16 Council Meeting minutes
SECOND was by Council Member Hammer
VOTE unanimous approval of the Council

Missy Staples, representative for Glasgow Citizens against New EPB Rates addressed the Council. Staples began by saying the group was organized to bring attention to the hardships that EPB’s new rate structure is causing Glasgow residents. She then presented the Council with a list of ways the new rate structure was hurting the citizens of Glasgow which included customers struggling to pay their electric bills and senior citizens with health issues among other things. Staples said they are asking and will continue to ask for help for the citizens of Glasgow.

Abby Medford addressed the Council in favor of the new rate structure. She held up signs pointing out the actual cost EPB was charged by TVA for one hour of peak demand during June and July. She said the peak demand period is real and not something Billy Ray, Superintendent of EPB made up. We are all electric consumers and as electric consumers we have to be willing to pay for what we use, Medford said. Although Medford said she could not guarantee a solution
to any of this conflict, she felt it was important to establish some basic facts and a place to start is as a community we could begin the process of moving forward. A challenge was made by Medford to join the EPB’s Roundup Program through which customers round up the amount of their monthly bill and allocate the difference to the Community Relief Fund to aid those who are having trouble paying their utility bills. She asked everyone to, even those FRECC customers to make a tax deduction donation of $11.88 annually in support of our neighbors and she asked the City Council Members to give their council pay to the Community Relief Fund for the benefit of our neighbors. Lastly, Medford said the EPB board has been listening and evaluating the concerns of the public and they are considering an alternate structure.

Members from the Tennessee Valley Authority (TVA) were on hand to answer questions. Dan Pratt, the regional representative of TVA spoke about the issue. Pratt claimed the EPB’s new rate structure was revenue neutral meaning that the EPB was not taking in more revenue than it did under the old rate structure. Pratt said that TVA sells energy to 154 utility companies using the same pricing structure as they use to sell power to EPB, however, Glasgow is the only utility company using a rate structure of this kind. There are 14 cities around the country that use the coincident peak method of calculation but all are on a voluntary basis.

Prior to reading the next item on the agenda, “An ordinance removing the members of the Glasgow Electric Plant Board” City Attorney Rich Alexander read the following regarding the legality of the proposed action:

Last Friday morning, I was given a copy of the proposed ordinance that is now before this council, which was prepared and sponsored by council members Honeycutt, Dickinson and Oliver. Having reviewed this proposed ordinance, and having researched the law on the issues involved, as the city’s legal adviser, I believe it is my responsibility to step in at this juncture and make the council aware of some things that should really be considered prior to action being taken on this proposed ordinance.

First of all, allow me to address a technical legislative issue. I do not believe that an ordinance is the proper vehicle for the action that is proposed to be taken. KRS 83A.010 (11) defines an “ordinance” as “an official action of a city legislative body, which is a regulation of a general and permanent nature and enforceable as a local law or is an appropriation of money”. The intended action embodied in this proposed ordinance – the removal of the members of the Glasgow Electric Plant Board – does not fit within this definition. The intended action is not regulatory, it is not general and permanent in nature, it is not creating local law and it is not an appropriation of money. So, just from that technical perspective, this is not the correct legislative measure to take in light of the subject matter involved. Rather, in my legal opinion, if a city council seeks to remove board members of a public utility under KRS 96.760(2), the proper vehicle for taking that action would be a municipal order. KRS 83A.010 (9) defines “municipal order” as “an official act of the legislative body of a municipality which is binding upon the officers and employees of the municipality and any governmental agency over which the municipality has jurisdiction”.

Now, having addressed the technical legislative issue, I next want to tackle the more substantive issue – the legality of this legislative body removing the members of the Glasgow
Electric Plant Board at this particular time and place. I emphasize the words “this particular time and place”. And I’ll explain why.

Let’s start with KRS chapter 96 – what is known in Kentucky law as the “Little TVA Act”. A few legal principles to get started – (1) When a city elects – as Glasgow did on January 6, 1958 by Ordinance No. 808 – to acquire and operate an electric plant under the “Little TVA Act”, that city accepts and agrees to be bound by the “Little TVA Act” and the Act is considered the complete law in Kentucky with respect to the operation of electric plants. (2) Under the “Little TVA Act”, an electric plant board is intended to be an independent, stand-alone entity and the legislative body of the city has very limited powers with respect to the oversight and control of that electric plant. Courts in Kentucky have held that the statutory provisions which permit the creation of an electric plant board were designed to result in an independent agency to “escape political interference”. *Settle v. Jones*, 206 SW2d 59 (1947). (3) Essentially, there are two (2) ways that a city’s legislative body may exercise oversight and control of an electric plant board: (1) one is through the appointments of the board members, and the (2) second is through the removal of board members pursuant to KRS 96.760(2), which is what we are dealing with tonight.

KRS 96.760(2) states as follows: “Any member of the board may be removed from office upon a vote of a majority of the members of the governing body of the municipality for inefficiency, neglect of duty, misfeasance, nonfeasance, or malfeasance in office”. “Misfeasance” is excessive, malicious or negligent exercise of statutory powers. “Nonfeasance” is the failure to act when a duty to act existed. And “malfeasance” has been defined as a wrongful or unlawful act.

Here is the point that I want to raise with the council – and I go back to my earlier phrase “at this particular time and place” - Is the council prepared to take action to remove the Glasgow Electric Plant Board members – right here, right now – without there being any sort of full and final investigation into the matter upon which to base the decision to remove and without giving the individual board members an opportunity to be heard on the issue? The proposed ordinance references the Attorney General’s office. Yes, the Kentucky Attorney General has gotten involved, has requested records from the city and the EPB, and has delivered a letter to our three (3) Congressmen. However, at this point, there are no legal findings or conclusions from Mr. Beshear’s office and there is still communication back and forth between the city and the EPB and representatives of Mr. Beshear’s office. The proposed ordinance also refers to “significant citizen complaints”; Comments made by a TVA representative during his interview by the media; and Comments made by Senator Rand Paul during a campaign stop in Glasgow. Having researched the law, and having read several court decisions relating to this very topic, in my legal view, at this particular time and at this particular place, the matter is not ripe for the type of action contemplated by the sponsors of this proposed ordinance. Other than just being opposed to the new rate structure – on what articulated and detailed data or proof will this council – tonight – conclude that the EPB board members were inefficient, negligent in their duties, misfeasant, nonfeasant or malfeasant in their office?
I mentioned to you that I have read various court decisions on this very issue. I definitely want to highlight one such decision because it is entirely on point and I believe it can give us all some insight into the potential legal ramifications that we as a city could likely face.

This case is out of the Logan County Circuit Court and it was decided in 2004. Among other attempts to exercise control of its electric plant board, the City of Russellville adopted a municipal order removing members of the electric plant board for alleged inefficiency, neglect of duty, misfeasance and nonfeasance. According to the pleadings in the case, the Russellville City Council took this action upon the recommendations and reports of an investigator hired for the purpose of investigating the electric plant board, its members and its administration and at no time prior to the council meeting at which the municipal order was adopted were the electric plant board members given the opportunity to meaningfully participate and respond to the charges against them. However, the adopted municipal order did give the electric plant board members the right to request a hearing before the next council meeting, but the request had to state with particularity the grounds upon which the Russellville City Council decision to remove them should be reconsidered.

I could go into a lot more detail about the Russellville case and the legal precedents involved, but at the end of the day, the Logan Circuit Court ruled as follows:

A. An individual, in this case EPB board members, subjected to governmental action is entitled to procedural due process, including the opportunity to be heard and is further entitled to a decision supported by substantial evidence.

B. The Russellville City Council violated the electric plant board members’ due process rights by removing them without conducting any trial type adjudicatory hearing before the removal decision was made.

C. The post-decision reconsideration hearing afforded the electric plant board members who appeared to the circuit court for justification of the council’s decision and not truly for reconsideration.

D. When utilizing KRS 96.760(2) to remove an electric plant board member, the council’s finding of cause (such as inefficiency, neglect of duty and the like) must have substance and not be illusory or minimal.

E. And lastly, the Court said that a review of the statutory framework in KRS Chapter 96 and the Kentucky cases applying it lead to the inescapable conclusion that the City’s ability to control the EPB is limited. If it does so by proper procedure, it may remove board members upon a finding supported by substantial evidence under KRS 96.760(2). Otherwise, the City has no authority to abolish the EPB or to manage its affairs.

I apologize for the length of my remarks, but to conclude . . . again, let me be clear . . . the 12 of you are the legislators and this is your decision to make, but I have hopefully outlined for you the legal issues and potential ramifications that could play out if this council acts to remove the EPB board members tonight. In short, I advise caution and due diligence on the matter at hand and from a legal standpoint, I would like there to be much more in the way of substantive and procedural due process for these board members so that they have the
appropriate forum and opportunity to be heard. To do otherwise, I believe, exposes the City of Glasgow to the same fate that befell the City of Russellville.

Council Member Honeycutt requested for the ordinance to be read at this time.

**ORDINANCE NO. _____________**

**ORDINANCE REMOVING THE MEMBERS OF THE GLASGOW ELECTRIC PLANT BOARD (This ordinance was prepared and sponsored by Council Member Wendell Honeycutt, Council Member Gary Oliver and Council Member Jake Dickinson)**

A proposed ordinance was presented for the first time and caused to be read for the first time.

**MOTION** was made by Council Member Dickinson for the approval of the ordinance  
**SECOND** was by Council Member Oliver  
**VOTE**

After the motion was made and seconded, Council Member Honeycutt addressed the issue describing it as “a municipal agency terrorizing the community.” Honeycutt said, what we have is a failure for the board to understand and what we want is a government board that responds to the needs of the people. He said this afternoon, the board did just that at a special called meeting at 3:00 p.m. The board instructed Billy Ray, Superintendent of the EPB, to develop a new rate structure for residential and small businesses before their next meeting in September. With that, Honeycutt stated he wanted to give the EPB board a chance to understand how their actions are hurting many residents of Glasgow and they should be the ones to correct the problem. Honeycutt made a motion to table the ordinance.

**MOTION** was made by Council Member Honeycutt to table the ordinance  
**SECOND** was by Council Member Oliver  
**VOTE**

Council Member Dickinson was the only no vote.

**RESOLUTION NO. 2016-2329**

**RESOLUTION APPROVING THE EXTENSION OF THE LOCAL AGREEMENT FOR THE ESTABLISHMENT OF A COOPERATIVE INDUSTRIAL DEVELOPMENT ECONOMIC AUTHORITY**

A proposed resolution was presented and caused to be read

**MOTION** was made by Council Member Groce for the approval and adoption of the resolution
SECOND was made by Council Member Lowery
VOTE unanimous approval of the Council

RESOLUTION NO. 2016-2330

RESOLUTION APPROVING A REVISION TO THE FIRE DEPARTMENT’S STANDARD OPERATING GUIDELINE, SECTION 127, FIRST WRITTEN ON 08/13/1990 AND REVISED INTERNALLY ON 03/27/2016

A proposed resolution was presented and caused to be read

MOTION was made by Council Member Neal for the approval and adoption of the resolution
SECOND was made by Council Member Hammer
VOTE unanimous approval of the Council

MUNICIPAL ORDER NO. 2016-704

MUNICIPAL ORDER REAPPOINTING BOB REECE TO SERVE AS A MEMBER OF THE FORT WILLIAMS RESTORATION COMMITTEE. THIS APPOINTMENT IS FOR A FOUR (4) YEAR TERM EXPIRING AUGUST 31, 2020 AND IS SUBJECT TO THE APPROVAL OF THE GLASGOW CITY COUNCIL

A proposed municipal order was presented and caused to be read

MOTION was made by Council Member Lowery for the approval and adoption of the municipal order
SECOND was made by Council Member Norris
VOTE unanimous approval of the Council

MUNICIPAL ORDER NO. 2016-705

MUNICIPAL ORDER APPOINTING DARRELL PICKETT TO FILL THE UNEXPIRED TERM OF CLEO C. HOGAN, JR. ON THE VETERANS WALL OF HONOR STANDING COMMITTEE. THIS APPOINTMENT EXPIRES AUGUST 31, 2018 AND IS SUBJECT TO THE APPROVAL OF THE GLASGOW CITY COUNCIL

A proposed municipal order was presented and caused to be read
MOTION was made by Council Member Groce for the approval and adoption of the municipal order
SECOND was made by Council Member Neal
VOTE unanimous approval of the Council

MUNICIPAL ORDER NO. 2016-706

MUNICIPAL ORDER APPOINTING MIKE WILSON TO FILL THE UNEXPIRED TERM OF JOEL WILSON ON THE VETERANS WALL OF HONOR STANDING COMMITTEE. THIS APPOINTMENT EXPIRES AUGUST 31, 2018 AND IS SUBJECT TO THE APPROVAL OF THE GLASGOW CITY COUNCIL

A proposed municipal order was presented and caused to be read

MOTION was made by Council Member Hammer for the approval and adoption of the municipal order
SECOND was made by Council Member Bucher
VOTE unanimous approval of the Council

ANNOUNCEMENTS:

PLAYING AT THE PLAZA THEATRE AUGUST 26TH AND 27TH, THE BLUEGRASS GOSPEL MUSICAL “SMOKE ON THE MOUNTAIN.” “THIS IS GOOD CLEAN COMEDY THAT IS FUN AND ENTERTAINING FOR ALL AGES.”

TO HELP THE COMMUNITY FOOD PANTRIES, THE 8TH ANNUAL FOOD DRIVE, “TO THE BRIM” WILL BE HELD AUGUST 31ST THROUGH SEPTEMBER 3RD. THREE WAYS TO HELP ARE TO ORGANIZE A FOOD DRIVE, BUY AND DONATE CANNED OR BOXED FOOD AT WALMART AND BUY AND DONATE CANNED OR BOXED FOOD AT HOUCHENS. FOR MORE INFORMATION CONTACT THE COMMUNITY RELIEF FUND AT 270-651-9006. THANKS FOR CARING.

G TOWN SOUL FEST WILL BE HELD ON THE SQUARE SATURDAY, SEPTEMBER 3RD FROM 2:30 P.M. TO 8:30 P.M. A 5K SOUL RUN WILL BEGIN AT 7:45 A.M. FOR MORE INFORMATION CALL 270-834-8537

COUNCIL MEMBER GROCE SAID HIS MOTHER AND FATHER WERE IN A BAD ACCIDENT LAST WEEK AND HE WANTED TO THANK THE GLASGOW POLICE DEPARTMENT, GLASGOW FIRE DEPARTMENT AND AMBULANCE SERVICE FOR ALL THEIR HELP.
There being no further business to come before Council, Council Member Norris made a motion for adjournment at 8:16 p.m., Council Member Neal seconded. Motion carried.

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DICK DOTY, MAYOR

ATTEST:

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TOMMIE S. BIRGE, CITY CLERK