

Cuyahoga Falls City Council
Minutes of the Council Meeting
April 28, 2003

CALL TO ORDER Mrs. Hummel at 6:30 p.m.

ROLL CALL Mr. Schmidt, present; Mr. Gorbach, present; Mr. Flinn, present; Mr. Barnhart, present; Mr. Potts, present; Mr. James, present; Mr. Walters, present, Mrs. Pyke, present, Mrs. Klinger, present; Mr. Bauer, present; Mrs. Hummel, present.

INVOCATION Mr. Schmidt

PLEDGE Mr. Gorbach

APPROVAL OF MINUTES

The minutes of the April 14, 2003 regular Council meeting were approved as submitted.

REPORTS AND COMMUNICATIONS

1. A letter dated April 11, 2003 from Judge Hoover to President Kathy Hummel & Members of Council regarding the intent to commission a needs analysis of court facilities and regarding decorating improvements to Council Chambers (copy attached).
2. A legal opinion from Mr. Arrington to Mrs. Hummel regarding the appointment of Donald Smith as Administrative Assistant (copy attached).
3. A Notice from the Ohio Division of Liquor Control regarding a new liquor license to Brucorp dba Reggies All Family Restaurant, 4065 State Road, Cuyahoga Falls, Ohio.
4. A Notice from the Ohio Division of Liquor Control regarding a liquor license transfer from Zirconia Management Inc. dba Christophers, 657 Portage Trail, Unit 12, Cuyahoga Falls, Ohio 44221 to Retzer Euro Café Inc. dba Retzs Laconis II, 547 Sackett, Cuyahoga Falls, Ohio.
5. A Notice from the Ohio Division of Liquor Control regarding a liquor license transfer from RCJG Inc. dba Northgate Lanes, 2871 State Road, Cuyahoga Falls, Ohio to Strike One Enterprises Ltd. dba Northgate Lanes, 2871 State Road, Cuyahoga Falls, Ohio.

NEW LEGISLATION

Temp. Ord. No. B-72 (Finance Committee)

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT OR CONTRACTS ACCORDING TO LAW FOR PURCHASE OF A CARGO VAN FOR THE FIRE DEPARTMENT, AND DECLARING AN EMERGENCY.

Temp. Ord. No. B-73 (Finance Committee)

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH BRK BRANDS FOR THE PURCHASE OF SMOKE DETECTORS, AND DECLARING AN EMERGENCY.

Temp. Ord. No. B-74 (Finance Committee)

AN ORDINANCE AMENDING RESOLUTION NO. 5-2002 AND ORDINANCE NO. 50-2003, TO PROVIDE HARDSHIP DEFERMENTS FOR CERTAIN ASSESSMENTS, AND DECLARING AN EMERGENCY.

Temp. Res. No. B-75 (Community Development Committee)

A RESOLUTION AUTHORIZING THE FILING OF A GRANT APPLICATION WITH THE OHIO & ERIE CANAL CORRIDOR COALITION, AND DECLARING AN EMERGENCY.

SPECIAL COMMITTEES

None.

PUBLIC HEARINGS

None.

STANDING COMMITTEES

PLANNING & ZONING

Nothing to report.

FINANCE

Temp. Ord. No. B-63

Council Clerk read B-63 (third reading). Mr. Gorbach moved to adopt B-63, second by Mr. Barnhart. Motion passed. Voice Vote (11-0).

Temp. Ord. No. B-64

Council Clerk read B-64 (third reading). Mr. Gorbach moved to adopt B-64, second by Mr. Schmidt. Motion passed. Voice Vote (11-0).

Temp. Ord. No. B-65

Council Clerk read B-65 (third reading). Mr. Gorbach moved to adopt B-65, second by Mr. Barnhart. Mr. Gorbach wanted to make sure the concerns of Mr. Degraw, the resident who spoke last week, were addressed. Mr. Bell stated he gave the punchlist to the contractor and will get them resolved within the next couple of weeks. Motion passed. Voice Vote (11-0).

PUBLIC IMPROVEMENTS

Temp. Ord. No. B-66

Council Clerk read B-66 (third reading). Mrs. Klinger asked about the amendment that Council was to have received as discussed in Committee. Ms. Jones stated that she had no amendment and indicated that Council Clerk could write in the amendment language for Council to vote on. Mr. Walters moved to amend B-66 by changing the amount in line 32 from \$15,000 to \$10,000, and adding at the end of line 33, the words "Water Fund in the amount of \$3,000 and Sewer Fund in the amount of \$2,000", second by Mrs. Klinger. Amendment passed. Voice Vote (11-0). Mr. Walters moved to adopt amended B-66, second by Mr. Bauer. Motion passed. Voice Vote (11-0).

PUBLIC AFFAIRS

Nothing to report.

COMMUNITY DEVELOPMENT

Nothing to report.

SCHEDULE OF MEETINGS

Planning & Zoning Committee:	Monday, May 5, 2003 6:15 p.m.
Finance Committee:	6:20 p.m.
Public Improvements Committee:	Subject to call.
Public Affairs Committee:	Subject to call.
Community Development Committee:	6:25 p.m.

MISCELLANEOUS BUSINESS

Mrs. Hummel commented on the letter we received from Judge Hoover about the study in terms of court facilities and stated that Mrs. Truby had indicated earlier to Judge Hoover that she was working on that. Mrs. Hummel asked Mrs. Truby about the status of Judge Hoover's request. Mrs. Truby stated a study is occurring. She has a price from one firm and is waiting for another. They are doing a study on the entire building instead of just the court area.

Mr. Schmidt moved to adjourn, second by Mr. Flinn. Motion passed. Voice vote (11-0). Meeting adjourned at 6:45 p.m.

Kathy Hummel, Council President

Cathleen J. Beebe, Council Clerk

Cuyahoga Falls Municipal Court

2310 Second Street

Cuyahoga Falls, Ohio 44221-2583

330-971-8280

Fax: 330-928-7722

Kim R. Hoover
Judge

Lisa L. Coates
Judge

April 11, 2003

President Kathy Hummel &
Members of City Council
2310 Second Street
Cuyahoga Falls, OH 44221

Dear President Hummel & Members of City Council:

In 2002 Judge Teodosio was the presiding judge of the Municipal Court until November when I again assumed those duties. Judge Teodosio began her service to the Juvenile Court in January 2003 and in March Judge Lisa Coates was appointed to fill the unexpired term.

In 2002, the Court was able to operate without a deficit charged to the Cuyahoga Falls General Fund although we were barely able to break even. I have taken steps to ensure better financial performance in 2003.

As promised in August of last year when I appeared before Council on the creation of a Special Projects Fund, I now report that it continues to grow at the rate of about \$10,000 per month. To date I have made no expenditures from that source but intend to commission a needs analysis of court facilities soon.

We are grateful that our roof leak problem is being addressed and that a handicap ramp has been built. Thank you for these improvements and the re-decorating of Council Chambers which benefits us as a courtroom each day. May we share some of the expense with you?

Sincerely,



Kim R. Hoover

KRH:cw

SERVING

Boston Heights Boston Twp. Cuyahoga Falls Hudson Macedonia Munroe Falls Northfield Northfield Ctr. Twp.
Peninsula Reminderville Sagamore Hills Silver Lake Stow Tallmadge Twinsburg Twinsburg Twp.

City of Cuyahoga Falls
Department of Law
Legal Opinion 2-2003

To: Kathy Hummel, President of Council
cc: Mayor Don L. Robart
All members of Council
Cathleen Beebe, Clerk of Council
Donald Smith, Administrative Assistant
From: Virgil Arrington Jr., Director of Law
Date: April 24, 2003
Re: Appointment of Donald Smith as Administrative Assistant

You have asked for a legal opinion “regarding the Mayor’s appointment of Donald Smith (Administrative Assistant to the Mayor) as the individual who is running the Police Department on a daily basis, in view of the language of our Charter Article II, Section 3J.”

Article II, Section 3J of the charter states that the Mayor shall:

Be the executive head of the Police and Fire Departments and as such, and to the extent not inconsistent with this Charter, have all powers and duties connected with and incident to the appointment, regulation, and government of such Departments and the removal and discipline of the officers and employees thereof as are now or may hereafter be conferred upon the Director of Public Safety of a city by the general laws of Ohio as supplemented by legislation of Council consistent therewith; and none of such powers and duties shall be transferred, reassigned or delegated to another officer, individual, board or commission.

This provision establishes the Mayor as the city’s safety director, granting him broad governmental authority over the safety forces, and limiting his ability to abdicate that authority to another person.

Although your question focuses on Donald Smith, he is, in actuality, irrelevant to this inquiry. The charter does not distinguish between the

people to whom the Mayor may or may not delegate authority. To the extent the charter prohibits the Mayor from delegating authority to Donald Smith, it also prohibits him from delegating the same authority to any other person, regardless of position. To the extent that the Mayor may delegate authority at all, he may delegate it to Mr. Smith.

The charter provision raises two questions. First, what powers and duties belong uniquely to the Mayor, and second, at what point are those duties improperly “transferred, reassigned or delegated” to another?

As to the first question, the charter confers upon the Mayor such powers and duties as are conferred upon directors of public safety by state law. Two provisions of state law are relevant to this inquiry. Section 737.02 provides for general powers of safety directors in language very similar to our charter. Section 733.01 provides that the director of public service shall be the appointing authority for the safety forces. In Cuyahoga Falls, the Mayor is the appointing authority of all employees. Article II, Section 3(F), Cuyahoga Falls Charter.

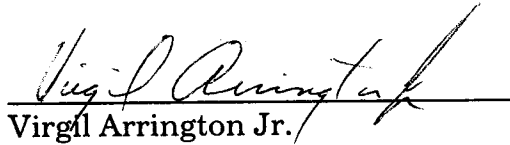
Reading the charter together with relevant state law, the Mayor is the chief executive officer of the city’s safety forces. As such, he has the authority to make the broad policy decisions governing those departments and to appoint, remove, and discipline safety department employees.

As to the second question, the charter states that the Mayor’s authority may not be “transferred, reassigned or delegated” to another. In this sense, our charter is unique and does not follow any specific statutory language. However, in analogous language, state law prohibits a legislative body from delegating or abdicating its legislative authority to an administrative official or body. In construing this law, the courts have held that this does not prohibit administrative bodies and officers from making enforceable rules. Courts have held that such rules are proper so long as the General Assembly provides some guidance to the administrative bodies on the parameters of the rules. There is, therefore, no violation unless the General Assembly completely abdicates its responsibilities or divests itself of its powers. This same principle applies to our charter.

With the chain of command in the police department, many individuals participate in “running the police department on a daily basis,” to

borrow the language from your question. The management of any department requires many decision-makers who, working together, make many authoritative decisions from day to day. The charter does not require the Mayor to make each and every management decision in the police and fire departments. Such would be an impossibility and a ludicrous interpretation of the charter. The Mayor receives the help of many in exercising his authority over the safety forces. He also retains his authority to review, modify, and overturn any decision made in the police department by any official. That so, he has not abdicated his authority as safety director in a manner contrary to the charter.

Donald Smith was hired to serve as a liaison between the Mayor's office and the police department, which was made necessary by the vacancy in the position of police chief. As such, he has performed a valuable service to the Mayor and the city. The Mayor has not transferred, reassigned or delegated his authority to Mr. Smith in any manner contrary to the charter. Accordingly, it is my opinion and you are advised that the appointment of Donald Smith as administrative assistant is not a violation of Article II, Section J of the Cuyahoga Falls Charter.


Virgil Arrington Jr.