

PARTIAL VERBATIM TRANSCRIPT¹ OF COUNCIL STUDY SESSION
REGARDING: ETHICS ORDINANCE
MAY 28, 2003

Councilmember Balk: In awarding of contracts, especially for requests for proposals, one which is a contract that is not where you are bidding on a real specific nuts and bolts, but really it has more of a qualitative interpretation. Does that give you an advantage? In my conversation with my fellow councilmember Jeff Frye, who is in a business that many times responds to requests for proposals with other cities, and Hiller West, asking him, does being on the committee give you an advantage? He felt it did. Jeff Frye talks about when you see a request for proposals, the first thing a company does is call up the city to get more information so that they can tailor their proposal to what the city wants. Sometimes it's understanding what languages they are using so that, so that word that that everybody's been using just hits. The question is, does that advantage, if you are on the planning commission or any commission that is involved in the development of a proposal give you an advantage or an unfair advantage, and is it unfair? The other thing Councilman Jeff Frye shared with me is that some cities feel that additional information that is requested is so important that sometimes they might call on Monday afternoon and get one answer to a question, then somebody else might ask the exact same question on Friday and get a different answer. What some cities have done, because that was such an important part of the process, is to have a meeting, invite all those people interested in the proposal, and they'll answer questions only at that meeting, so it's answered in front of everyone so everybody has the exact same information. So if you are on a committee that is working on a project that you are going to do a request for proposal, having those insights of information might be an advantage. The question is, is it an unfair advantage? I think that is something that we need to explore.

MAYOR WALSER: OK. Quick question from Councilman Mechling.

COUNCILMEMBER MECHLING: Just to reiterate, I think Mr. Balk really summed up what it's all about when he said that it's about perception. It's basically whether it is fair or unfair or gives somebody a perceived advantage, it's really all about perception and when the perception is that the fix is in, why bother to participate in the process, then it's a bad thing and I think that's really

¹ This transcript does not include the comments preceding Mr. Balk's comments, nor does it contain the comments by council following Mr. Olson's statement.

what it's about, it's the perception and I think that's why we need to go way over the edge to avoid the perception. I would also like to comment on Mr. Hunnicutt's comment, he said people feel like they get more important as the years go by. How many years have you been on the council?

COUNCILMEMBER HUNNICUTT: (inaudible) (laughter)

MECHLING: Oh, I see. You're the exception.

HUNNICUTT: Fifteen, isn't it, Betty?

BALK: He's a male, he's good, he's old, right?

MECHLING: Who can count that high?

MAYOR WALSER: Thank you. Chairman Olson. Would you feel comfortable using the podium or the table or—

ETHICS BOARD CHAIRMAN ERIC OLSON: Do I need a mike for recording purposes?

MAYOR WALSER: Yes, I think that would be a good idea.

ERIC OLSON: First of all, I would like to commend the council for dealing with this topic. I mean the fact that a group of educated community leaders have been grappling with a topic such as this goes to show that it's not an easy topic. Everybody is looking for a solution. We are no experts by any means. We are just a group of five people in the community that are on the board. We put a lot of thought into this and I'll spend a couple of minutes telling you kind of what our thoughts are.

The ordinance was passed back in December of 2000, I believe. At that time it was a well-written, detailed ordinance in which the City of Monroe established the Ethics Code, the Code of Ethics. In that Code of Ethics, the board's position was simply to take matters under advisement, issues that were sent to us, we would look at them and we would issue an advisory opinion. It has no clout; it is simply an advisory opinion back to the council, it's just what we think. We look at the facts and based upon the City's Code of Ethics, this is what we as five people in the community see the issues are. And this is how we would act accordingly. The City Council can either accept that advisory opinion and go

along with what we recommend, or you can say “thank you very much” and go forward based upon additional facts and things that you may have in mind to make your own decision. Whatever action the council takes, we will abide by that as an ethics board. Our feelings aren’t going to be hurt. We are a bunch of lay people who are asked our opinion and it’s given to you.

This last incident that occurred, there were several problems with it. Actually the last ordinance that occurred, the last issue. As far as problems with the City’s Code of Ethics, we didn’t think there was a problem with the City Code of Ethics. It was well written, like I said, it was detailed, and it dealt with just about everything you could, from definitions to defining what a public official is. It is defined as an elected official or appointed person. It would not apply to a police officer or city employee, for example, as related to earlier. But some people felt that it was too restrictive and that it wouldn’t allow for people in the community to work for the city and serve, to do business with the city and also to be on a board. That is a problem we as an ethics board can’t resolve. That is something you as a council are going to have to work with and that’s one reason why we’re here tonight. This last case that was brought to us, there were some issues that could have been done better. One, the time issue that was involved, we were given very short notice and the time in which to make a decision. In hindsight, we could have spent more time maybe interviewing other people that were involved in the issue, getting a more well-rounded perspective on what the issues were. However, the board reviewed the facts as they were presented to us. We looked at the City’s Code of Ethics, and then I wrote an opinion that was then returned to the Mayor in which we dealt strictly with the facts of the case, strictly with the elements of the Code, which simply said that the gentleman was a public official as defined by the ordinance, he stood to gain and because of that, we felt that there was a potential for a conflict of interest, a potential for an appearance of a conflict of interest. It was the board’s opinion that it would be in the best interest of the city to not have that gentleman do the work for the contract for the city. Subsequently the code was changed and RCW 42.23 and RCW 42.36, which were the Conflict of Interest and Appearance of Fairness statutes, they were adopted. With the adoption of the RCW’s, it is the board’s opinion that that has substantially weakened the City of Monroe’s Ethics Code. Again, the City of Monroe’s Ethics Code we feel is well-written, it’s detailed, covers Monroe, it applies to Monroe. State law is great, but it is written generally for the state for cities of all sizes, as the City Attorney stated earlier. What can be done? We don’t have all the perfect answers, but we have some ideas.

First of all, we feel the City Council needs to draft or adopt a Code of Ethics that meets the needs of the City, meets the needs for the City of Monroe, doesn't meet the needs for Spokane or Cle Elum or Seattle or anywhere else, it meets the needs of our community. Because we are the people that make up our community. We are the ones here tonight struggling with this issue. That ordinance needs to have a strong conflict of interest clause. Anyone specifically with any conflict of interest, potential conflict of interest, or the appearance of the conflict of interest. After all, if appearance of conflict of interest is out there, it has to be dealt with just as an actual conflict of interest.

The second issue that was recommended is once a code has been brought forward and adopted, then stick with it. Because if you adopt a code and an issue comes up and you change it, the appearance in the public sector is nobody can make up their mind, they are changing the rules of the game at half-time. And it's tough to answer to constituents is why you are changing the rules in the middle of the game.

Another option might be to develop a policy or code for elected and appointed city officials which clearly delineates what and how much business, if any, a person can do with the city while serving as a city official. And you have to look at both extremes. It is the Ethics Board's position, however, that a firm stance of an elected official, or if you choose to serve as a volunteer or a member of a commission or a board, going right along with accepting that position is accepting the fact that during your term you agree not to do business with the city. That alone does away with any appearance or potential appearance of conflict of interest and that is the strong consensus from the board.

In conclusion, I would like to quote one of the Ethics Board members where he stated, "The Ethics Board is concerned with the manner in which the advisory opinion of this board was handled. The Ethics Board is comprised of five citizens of Monroe who have limited knowledge of how city business is conducted. We were asked to review the circumstances and give an opinion concerning interpretation of the Ethics Code on short notice. In our opinion, it would have been in the best interest of the City if the City Council had just disagreed with the advisory opinion, and recommended the contract be awarded. That is something you can do with the city code. By doing that, you would have been following the city code. It is clear that the City Council had a greater understanding of the situation and believed that the hiring of the contractor was the correct decision. You may be privy to additional details that we weren't given in an hour discussion of the issues. And that's understandable (inaudible). Our concern as a

board is that by removing portions of the Monroe Ethics Code and adopting the RCW, the Monroe Ethics Code has been weakened. However, the Ethics Code still has a statement in the opening paragraph of the amended code that states, and I quote: “Those in public service need to avoid both actual and potential conflicts between their private self interest and the public interests.” It is our desire that all public officials in the City of Monroe live up to the same. I think that is why we are here tonight, is we all want to do what’s right, we want to establish something as a city code which clearly delineates what can and can’t be done. There was a lot of discussion on the topic. From the Ethics Board, I would encourage you to stick with the current code, maybe review it. It is more stringent than the state code in a lot of ways. We as a board see that as a good thing. Thank you.

[end of transcription]