

Open Work Session
Wicomico Youth and Civic Center Alcohol Restriction
April 5, 2016

Mr. Bob Culver, County Executive, Mr. Wayne Strausburg, Director of Administration, and Mr. Paul Wilber, Acting County Attorney, came before Council. Mr. Strausburg said Senate Bill 1140 was sponsored by Senator Mathias and Senator Eckard. It was unanimously approved in the Senate. The bill has crossed over to the House and was heard before the House Committee on Economic Matters on March 29th. He said Executive Culver and he attended the hearing. The bill received a favorable recommendation and has moved to second reader. He said he checked the Maryland General Assembly website today, and he has not seen an update, but he understands a lot of bills were going to be read today. Mr. Strausburg said, if approved, the bill will establish the availability of a Class B license for the Civic Center. He said the County would have to apply for the license in the normal process and would be subject to the jurisdiction of the Board of License Commissioners. He said the County would have to purchase a license, be subject to their inspections, and subject to fines if, in fact, the County was found in violation. He said he has provided Council members with a copy of Mr. Paul Wilber's legal research, and he is available to answer any questions regarding the legal research. Mr. Joe Holloway said the factual background section indicates, in 1946, Mr. and Mrs. Woodcock conveyed a parcel of land to Wicomico County. The County also obtained an adjoining parcel, the Hearn parcel. Then, in 1959, Wicomico County conveyed the Woodcock parcel and the Hearn parcel to the Wicomico War Memorial Builders, Inc., and the next paragraph indicates the Woodcocks joined in the 1959 deed with Wicomico County to remove the reverter clause to expressly release and quit-claim any rights that they had in the property. Mr. Joe Holloway asked if it was Mr. and Mrs. Woodcock that signed that deed or someone in their family, to which Mr. Wilber responded that it was Mr. and Mrs. Woodcock. Mr. Joe Holloway then asked if they signed the deed to release any rights they had in the property, to which Mr. Wilber responded, yes. Mr. Joe Holloway then clarified that they released the right for the County not to sell any alcohol on the property. Mr. Wilber said in 1946 the Woodcocks conveyed their parcel of land to Wicomico County. He said Wicomico County soon thereafter got a second piece which is called the Hearne parcel, which is the where the rear of the Civic Center sits. In 1959, the Woodcocks joined in the deed to remove the right of reverter clause. The right to reverter clause gave them the right to get the property back if alcohol was consumed on the property. Mr. Wilber explained that Mr. and Mrs. Woodcock put the right of reverter clause in the 1946 deed, but took it off in the 1959 deed. Mr. Wilber said in the 1959 deed Wicomico County put the alcohol restriction on both pieces of property when they conveyed it to the War Memorial Builders. He said in 1971, War Memorial Builders conveyed the property back to Wicomico County without any restrictions on the deed. Mr. Joe Holloway asked how did the restriction come off, to which Mr. Wilber said it was conveyed without any restrictions at all. He said legally what happened was the ownership merged back to Wicomico County. Mr. Joe Holloway said this matter has been discussed by many Councils, probably every Council since the property was transferred to the County. He said he keeps hearing about the promise. The promise should trump any deeds. Mr. Joe Holloway clarified that the Woodcocks agreed to take off the alcohol restriction, to which Mr. Wilber said in 1959 the Woodcocks were

out of the picture. Mr. Kilmer clarified that the County put the covenant on the property in 1959, to which Mr. Wilber said the County put the covenant on the property, but the Woodcocks were out of the picture. Mr. Joe Holloway asked why the County added the alcohol restriction in 1959 as he is wondering if the Woodcocks asked to have the alcohol restriction added to the deed. Mr. Wilber said he did not know and suggested for someone to look at the Council minutes from 1959. Mr. Joe Holloway said the minutes would be hard to find. Mr. Joe Holloway said knowing what he knows about Mr. Woodcock's history, and his hatred of alcohol, he cannot imagine them taking the alcohol restriction off the property unless there was some other agreement made. Mr. Joe Holloway said certainly he did not become convinced that alcohol should be served at the civic center. He was very strong willed against alcohol. Mr. Wilber said someone told him that Mrs. Woodcock did not die until the 1990s, so she may have influenced Council's thinking. Mr. Joe Holloway said it was Council's thinking that Mr. Woodcock still did not want alcohol served there given the fact they gave them the land. Mr. Wilber said he did his analysis based on what is in the deeds. Mr. Holloway said he understands the legality of it based on what Mr. Wilber has presented and what he understands of it, his problem is that a promise was made. The County made a promise not to serve alcohol on the land that was given to them. He just cannot understand how someone who felt strongly against alcohol and wanted the property used for youth would suddenly change his mind that alcohol could now be sold on the property. Mr. Kilmer said Mr. Wilber has done excellent legal work, and it appears he has cleared up the legal situation. He said, in 1971, the property was conveyed back without the covenant, whether it was an oversight or whether it was intentional, Mr. Wilber cannot say and Council cannot say. He said it seems like it was an oversight, but the legal issue is settled. It is now more of a political or moral question in keeping a promise. Mr. Kilmer said Council wanted to see what the covenant said and Mr. Wilber found it. Mr. Kilmer said it seems the Executive has the legal authority to sell alcohol, but he also understands Mr. Joe Holloway's comment in that a promise was made. He said in 1971 there may have been an oversight. He then asked does that take away the moral promise that was made 1946 or does something that long ago still bind the County. Mr. Wilber said there is another line of legal analysis and that is called the "waiver line". Based on what he has been told by various individuals, since 1971 or even before 1971, there have been a number of events at the civic center where alcohol has been distributed or you might even say sold because someone paid for the events to have bars where alcohol could be distributed to people. He said multiple incidents of this constitute a waiver of any covenant. Mr. Wilber said there are two strong arguments. Mr. Joe Holloway said it also says what they were doing was wrong. Mr. Joe Holloway asked, if you are speeding down the road at 85 mph for five years and do not get caught and then one day you get caught, can you claim a waiver, to which Mr. Wilber responded, yes. Mr. Wilber said when you have a covenant on land and you violate that covenant time and time again, you lose your right to enforce it; it is consider a waiver of the covenant. Mr. Joe Holloway clarified that the person who is breaking the covenant cannot enforce it anymore, to which Mr. Wilber responded the person who made the covenant cannot enforce it. Mr. Cannon said if Mr. and Mrs. Woodcock were made aware of the violation, it would be a waiver. Mr. Wilber said, as he understands it, the events at the civic center were well known. Mr. Joe Holloway said the Woodcocks were not there to be made aware of the violation. Mr. Hall said his understanding is the property was donated in 1946 with a covenant to be used as a

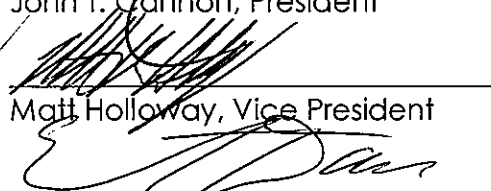
baseball field, but as soon as they built the civic center, the rules changed. Mr. Joe Holloway said the rules did not change. He then asked if the deed said it had to be used as a baseball field. Mr. Hall said it was conveyed with the intent as there was not an intent to build a civic center on that piece of property. Mrs. Harris, Assistant County Attorney, said she did a lot of research on this topic. She read over the 1946 notes to see what was discussed and there was talk of there being a stadium of sorts. It did not mention if it was inside or outside. She said she has a timeline that she drafted that shows the first time an arena was mentioned, the concept of a civic center building. Mr. Hall said he grew up in Wicomico County, and he remembers the stadium, and it was a wooden fence to a baseball field. Mr. Wilber said the 1946 deed says "a recreational center primarily for the youth of Wicomico County, State of Maryland, as well as citizens of Wicomico County, State of Maryland." Mr. Joe Holloway said that is why the civic center is called the Wicomico County Youth and Civic Center. Mr. Dodd said Mr. Wilber did a good job in highlighting everything but there are still some what ifs. He said he attended a Parkside High School baseball game and some of the people, young and old, came up to him talking about alcohol being served at the civic center and the moral issue. He said it was mentioned that the property was donated to the County and what if someone else wants to donate property to the County, but they see that the County reneged on the promise. He said the County is drawing a fine line. He said there will be a hearing held on it, but previous Councils did not touch this matter for some reason. Mr. Joe Holloway said previous Councils did touch on this matter, but they did not want to go forward with it. Mr. Dodd said he wonders why the previous attorneys did not dig in deeper. Mr. Wilber said he cannot speak to that. Mr. Dodd said this topic came up in 2002 and 2006 and everyone said they did not want to move forward with it because people were against it. Mr. Joe Holloway asked what is Council's role. Is it something Council approves? Is this something the Executive can move forward on his own? Mr. Wilber said he has rendered his legal opinion in that the covenant is no longer on the civic center, and he thinks the Executive has adopted his legal opinion. He said he thinks the Executive has gone to the legislators and has asked for them to create a special section in state law that will allow Wicomico County to apply for a liquor license, which is a hearing process. Mr. Joe Holloway said the Council does not hold liquor license hearings. Mr. Wilber said that is a process of the Board of License Commissioners. Mr. Joe Holloway then asked if this matter has to come to Council, to which Mr. Wilber responded he does not believe it does. Mr. Cannon said it should be vetted publically. Mr. Joe Holloway said a long time politician, Louis Riley, told him there is a lot of young people who will like it and a lot of old people that will not like it and a majority of the people will not care either way. Mr. Joe Holloway said he is going to voice his opposition to selling and serving alcohol at the civic center. He said the County made a promise a long time ago. He said he understands the revenue part of it, and he thinks Mr. Wilber did a great job with the legal analysis part of it.

Signatures are on the next page.

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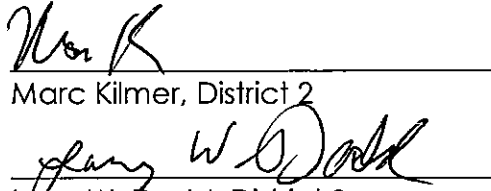
John T. Cannon, President



Matt Holloway, Vice President



Ernest F. Davis, District 1



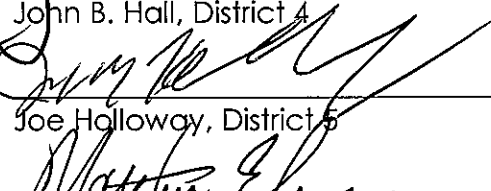
Marc Kilmer, District 2



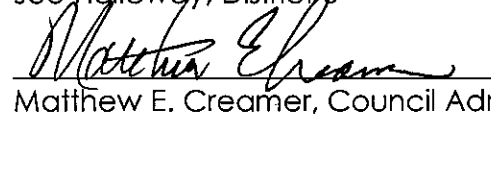
Larry W. Dodd, District 3



John B. Hall, District 4



Joe Holloway, District 5



Matthew E. Creamer, Council Administrator