

Special Administrative Session
Discussion on the Procedures for Selecting a New County Executive
August 28, 2020

Mr. Dodd called the meeting to order, and said they are going to continue the discussion on the procedures for selecting a new County Executive.

Mr. Holloway said he would like to ask Council to take the position of opening up the applications for County Executive, and he would like to get a consensus on that, to which Mr. Davis seconded. Mr. McCain said he has some comments on that, to which Mr. Holloway responded by asking if they can get a consensus first before moving on? Mr. McCain clarified, this is a Work Session. Mr. Dodd then asked Mr. Davis if he seconded Mr. Holloway's motion, to which Mr. Davis responded, yes, he seconds that.

Mr. McCain said he does not understand that recommendation. He said they are still in their 45-day period, and have until September 9th to appoint a County Executive. He said their attorneys have determined that the conditional appointment Council did with the Resolution last Thursday night, given the fact the candidate declined that, is now moot, and is not in effect. He said Council did not appoint anyone, no one has been appointed, and they clearly state that the County Council should proceed with the appointment process, and offer a new Resolution. He clarified, they are still in the process, and have two candidates. He said Council set a process for how this was going to be done, said they were going to accept applications up until August 11, do interviews, and all along were actually using September 1 as their date they intended to actually vote on this, which is their last scheduled meeting prior to the September 9th deadline that is still in effect. He said they have two candidates who have met those requirements, so it is pretty simple. He said Council is obligated, and, in fact, the attorneys made the comment over and over again, which he underlined several times, that Council should proceed with due diligence to fill this vacancy, and they need to make a good faith effort to fill that vacancy. He said, with that said, it is pretty obvious they need to vote. He said they have two candidates who have gone through the process that Council set, thus, on September 1, 2020 he recommends Council follow exactly what has been recommended to Council, make their good faith effort, do their due diligence, and vote on those two candidates, to which Mr. Dodd responded, this is not a meeting where they are going to vote. Mr. McCain clarified, he said on the 1st of September, he did not say today.

Mr. Holloway said he would still like to propose that they open the process back up to accept new applications, and he needs a consensus on that. Mr. Dodd then asked for a consensus, to which Mr. Cannon responded, he will give part of his consensus. He said he does not understand how you can possibly suggest you want to extend this. He said you set this formula, you set this whole pattern into being, you asked for the applicants, you established the deadlines, you received the three applications before the deadlines, the application period was closed, and you held public interviews. He repeated, public interviews, and he would say you have an obligation to follow through with the remaining candidates still on the list. He said you have the obligation not only to the process you began and you created, but you owe it to the public as well. Mr. Dodd then asked Mr. Wilber to elaborate on that.

Mr. Wilber said, as he said in his writeup, the Charter calls for a 45-day period that ends on September 9, and he thinks the intent of the Charter is to make a good faith effort to have an appointment in place

by September 9. He clarified, with that being said, if Council does not hit that September 9 deadline, he thinks they can go beyond that date. Mr. Dodd clarified, they can go beyond that date, to which Mr. Wilber responded, that is his opinion. Mr. Cannon said he can respect that too, but he is a little confused by Mr. Wilber's opinion, as well as Mr. Taylor's. He clarified, he does not know a whole lot about law, and he does not know that much about Legislative jargon, but one thing he has learned above and beyond all else is that there is a clear distinction between shall and may, and sometimes it makes or breaks any law in the land, and that is what they are looking at here. He said the Charter does not say they may, it specifically says they shall, and he understands that Mr. Wilber found a similar statute that he says could justify his reasoning to extend it, but he does not see how they can still overlook the fact that shall is shall, and may is may when they look at 407C. He said, if they look at 407D, that says they shall pick an individual from the same party, so he would assume, if they were following that logic, they could pick a democrat, so he really is a little confused as to where 30 days after they are already into this process they are now dealing with opinions that appear to conflict the Charter.

Mr. Wilber said they found a court of appeals case that dealt with the use of that word shall, and the language the court of appeals used said, as a rule of construction, when the duty is of a public nature and intended for public benefit, the time limit is directory as opposed to mandatory. He clarified, typically, he agrees that they think of shall as mandatory, but this court of appeals opinion, which he feels they have to work with, makes it something he believes is of such a public nature and for the public benefit, that is appointing a County Executive, that, if they need to go past the 45 days, they could.

Mr. Taylor said he did not initially research this particular point because he knew Mr. Wilber was, but he reviewed Mr. Wilber's opinion, and he reviewed the case he cited, and he believes Mr. Wilber also cited to legal treatise, or maybe it was cited in the case, but there is a legal treatise on it, and what Mr. Wilber has opined he totally agrees with, that is the law. He said he can tell Mr. Cannon there are many cases on it. He said the general logic is that, where there is no penalty for going beyond the time, then it is not mandatory, it is directory, and there is no penalty here. He said, if they stop to think about it, if they went beyond the 45 days, if Hurricane Laura hit Salisbury and not Louisiana, and they could not do anything until the 9th for whatever reason, then they could still keep doing it, to which Mr. Cannon responded, those are extreme exceptions. Mr. Taylor said that is an extreme exception, but the rule, and he can send Mr. Cannon the statutory treatise on it if he wants, but he has no qualms about this.

Mr. McCain said Mr. Taylor is missing the point. He said the point both Mr. Taylor and Mr. Wilber made was if Council cannot come to a decision by the deadline, which is September 9, and this is August 28, and they are being asked to start the clock over on August 28. He said Mr. Wilber and Mr. Taylor both have said, essentially, that is not a good faith effort of due diligence, and Council should be following the process. He said what they are discussing as far as extending this would be if, come September 9, for whatever reason, Council has not come to a solution, but this is August 28, and they are still in their process, so he is totally confused as to why they are even talking about restarting a clock on August 28.

Mr. Taylor clarified, he was addressing Mr. Cannon's matter, but he will say, in terms of what Mr. McCain brought up, he thinks Council can do as it pleases, and if they want to reopen and take more applications, they can do that. He said, as he understands it, the initial decision on how to take applications and the deadline was done by an informal poll referred to as a Doodle Poll, so there is

nothing cast in stone, and the Council can proceed as it pleases. He said, if Council wants to open up applications, they can do that, and they could also do that before September 9, and do it on an expedited basis, and he does not think there is any question about that. Mr. McCain said, just because they can by no means makes it right, to which Mr. Taylor responded, just because they can does not mean it is wrong, and they can play that game all day. Mr. McCain then asked Mr. Taylor if that is his legal opinion, to which Mr. Taylor responded, no, it is him speaking to Mr. McCain.

Mr. Cannon said his initial comment was in reference to the 45 days and had to do with the integrity of the process. He said Council has done the interview publicly, they have had three candidates, and just because maybe there is a problem with their voting for one of those candidates, they cannot move the goalpost and change their mind because that is a discredit to those individuals who worked very hard to go through the application process. He said, just because they want to, and maybe they have someone else in mind they would rather see, how is that not a disservice to Council, to the public, and to the people who applied and sat before Council and gave testimony on Thursday night.

Mr. Dodd again asked for a consensus.

Mr. Hastings said he wants to point out, just so it is said, he just wants to be on record so the folks will know that since last Thursday night when they went through this process, he has had a lot of folks reach out. He said he personally has received well more than 100 calls, text messages, emails, etc., and all in broad support of one individual, Mr. Anderton. He said, furthermore, since that time has passed they now have had multiple other organizations reaching out, community organizations that are trusted and respected, such as the Coastal Association of Realtors, the local NAACP, the Fraternal Order of Police, and a lot of other really well respected community organizations, as well as former Councilmembers and others who have reached out and specifically said this process as far as they are concerned should be over, and the public, in many ways, has spoken, and spoken quite loudly for Mr. Anderton. He said, just so it is said, he does not feel like there is a particular need to do a new process again, or to go in that direction. He said he feels like Council has done their due diligence for the public, and, as Mr. Cannon pointed out, Section 407C is very clear that the vacancy shall be permanently filled by Resolution by a majority vote of the Members of the County Council within 45 days. He said, in his mind, a lot of this is largely settled, and he would love to continue to see the Council really take an understanding, and grasp and move forward with the candidate who is really right for this position.

Mr. Holloway said there was not a majority vote for either one of the other two candidates, that was very clear, and it was unfortunate that the candidate who was picked decided he would withdraw his name. He said he came under a lot of stress, and, unfortunately, a lot of things were said about him and his family that should not have been said, and there were a lot of things more than that which caused him to withdraw his name, but they will not get into that because he thinks that is old news. He said there was not a majority vote for either one of the other two candidates, so, with that said, again, he will propose that they open up the process to accept more applicants, and hopefully they will get one, or two, or three, or four.

Mrs. Acle said she just wants to second what Mr. Holloway said about the majority with the other two candidates. She said she thinks that none of them at the table are attorneys, but they have two

excellent attorneys sitting in front of them giving Council legal advice that ultimately is what Council needs to follow. She then thanked Mr. Wilber and Mr. Taylor.

Mr. Dodd said most of Council have been fielding phone calls, text messages, and even voicemails all week long since last Friday, and it is unfortunate some of the information they are hearing that the candidate they supported had to go through, and his family, and he will just leave it at that. He said no person or human being should go through what they went through. He said he has had a lot of people suggest Council continue the process, and he means a lot of people, the Sheriff's Office, and people from these different organizations. He said he knows there is a lot of public opinion out there that wants this Council to open the application process, to which Mr. Cannon responded, he would challenge that. He clarified, he has not had one phone call yet in the entire time of anybody who has said they wanted to extend this process.

Mr. Cannon said he would also like to make a point about what Mr. Holloway said, and is something they have to take into consideration, and this is why he thinks it is important to bring these applicants back up. He explained, Dr. Desmarais was the last vote taken. Mr. Dodd then said they should not talk about the candidates, to which Mr. Cannon responded, he understands that, but this is important. Mrs. Acle said this is totally inappropriate. Mr. Cannon continued, Dr. Desmarais was the last vote taken. He said those individuals who voted for Carl Anderton or against Carl Anderton could have very likely taken that position because they knew they were going to be voting for Dr. Desmarais. He said, taking Dr. Desmarais out, it is possible, but he does not know because he has not talked to any of the Members of the Council, but it is possible that some of the Members of Council who originally did not vote for Mr. Anderton because they wanted to vote for Dr. Desmarais might now have a change of heart and want to vote for Carl Anderton. He clarified, he does not know because they have not had that discussion yet.

Mr. McCain said that is a very good point because they did not have a unanimous vote, they had a split vote, and now one of those candidates is no longer a candidate. He said, once again, getting back to the legal opinion saying Council should do what the attorneys say, they should do what the attorneys say. He said the attorneys say that the County Council should continue to make a good faith effort to fill the County Executive vacancy by September 9, so that is what they should do. Mr. Dodd said they are going to do that, they are opening up the process.

Mr. Dodd then asked for a consensus of four people, to which Mr. Davis, Mrs. Acle, and Mr. Dodd agreed with Mr. Holloway's suggestion. He clarified, it is not a vote, but they have a consensus.

Mr. Cannon asked Mr. Dodd how they are opening up the process; is it 45 days, is it going to be six months, exactly what is it going to be, and what process are they going to have that they are going to stick to? Mr. Dodd then asked if Mr. Cannon wants a deadline, to which Mr. Hastings responded, he thinks it would be helpful to put in some parameters. Mr. Cannon said they had one deadline that is no longer. Mr. Holloway said he thinks they should refer to Mrs. Hurley about the deadline issue.

Mrs. Hurley said, as Mr. Wilber said, they want to make a decision as close as possible to the date of September 9. She said Mr. Wilber has made it clear that Council can go beyond that date if they would like, and she thinks that Council could extend the application period for however long they think they

need to keep that process open until a candidate is brought forward who Council thinks is well qualified. Mr. Dodd said they have a qualified Acting Director right now, to which Mrs. Hurley responded, they do have an Acting County Executive. Mr. McCain added, they have two qualified candidates still, to which Mr. Holloway responded, but they do not have four votes. Mr. Cannon then asked how Mr. Holloway knows that? Mr. McCain also asked Mr. Holloway how he knows that.

Mr. Davis asked, what if Council goes in this process and votes, but they do not come up with a candidate, and deny both of them, then what are they going to do, to which Mr. McCain responded, then they will cross that bridge. Mr. Davis said they are going to cross it real soon. Mr. Cannon said it is an obligation, just as they would find any State that is mandated to balance their budget, to which Mr. Davis responded, the Charter is different and does not cover this. He said it just like when Mr. Cannon stood up and said to the public that one of the four Councilmembers can reverse their decision. He said that was embarrassing. He said Mr. Cannon is telling them to change their vote because his road did not go. He said that is not in the Charter, just like this is not in the Charter. He said the Charter is vague. He said the Charter was designed for a County Council, and there are not a lot of things in there that govern the County Executive, and that is the problem they are going through right now because it does not tell them how to handle this situation, so right now they are winging it because they do not know because it is not written in the Charter. Mr. Holloway said they are relying on their legal counsel.

Mr. Cannon said he would like to make one correction, and maybe Mr. Davis misunderstood what he said. He clarified, he did not say that he knew any Councilmember was going to change their vote, what he said was, if any one of the four individuals in this room did not vote for Delegate Anderton because they wanted Dr. Desmarais to be the County Executive, then that individual would not have voted for Delegate Anderton. Mr. Davis said Mr. Cannon did not say that the night of the vote. He clarified, he is talking about the night they voted, not talking about what Mr. Cannon just said today. Mr. Cannon said he is very confused, to which Mr. Davis responded, he figures.

Mrs. Hurley said she thinks the intent of the Charter is to try to fill this vacancy within 45 days, and she does not think the Charter has a condition as to what happens when the person chosen has withdrawn, so they are in a very different situation than what the intent of the Charter was originally drafted for, and she thinks Council should do its due diligence and try to find a candidate within a reasonable time.

Mrs. Acle said she does not think anyone up here wants to drag this process on. She said she thinks they are talking about something that is going to be a moot point because no one wants to drag this on.

Mr. Taylor said he has a suggestion on the timing. He said they have already had 30-some days for people to consider this, and it seems to him that Council could do a fairly short time period for people to submit applications perhaps by sometime next week, to which Mr. Dodd responded, he is not sure that is enough time. Mr. Taylor said they should be already listening to this, he would think, if they were already interested in becoming the County Executive, and that would then allow Council to probably, he would think, unless they get that Hurricane Laura he mentioned before, make their decision by the 9th of September. Mr. Holloway said he does not agree with that because, if anybody steps forward, there will probably be a lot of questions asked of Councilmembers and staff, not only Council staff, but Executive staff, about what the job is all about, if they do not already know. He said he does not see Council

setting a time limit right now. Mr. Dodd then asked Mrs. Hurley if she is prepared to open the process, to which Mrs. Hurley responded, she drafted a press release in case Council wanted to open up the process, and it can certainly be released tonight, if that is what Council wants to do. Mr. Dodd then asked Mrs. Acle how she feels about that, to which Mrs. Acle responded, she is fine with that.

Mr. Cannon said he has a question for the attorneys. He then asked, in reference to shall versus may in Section 407C, what is their opinion on Section 407D when it references the fact that the position shall be filled by an individual of the same party, to which Mr. Wilber responded, that still would apply. Mr. Cannon asked if that is not a shall or may, to which Mr. Wilber responded, the case he referred to related to time, so that was the holding of the court in a case like this. He said, in a situation like this, if they can hit the 45 days, great, that is preferred, but if they cannot hit the 45 days, it can go beyond, it is not like the process stops and nothing more happens, so it is a separate situation.

Mr. Holloway said they would have been in the same situation Mr. Wilber is referring to if nobody had applied. He said personally, and this is his own personal feeling, but he does not know why anybody would want to put themselves through this with the actions some folks have taken in the past weeks.

Mr. McCain said help me here because he is confused. He said they set a deadline for applications for August 11, and they had four people apply, and two of those have subsequently withdrawn, so they still have two applicants who met the requirements they as a Council agreed to do, so what do they tell these two candidates? Mr. Dodd said they have already been through this, to which Mr. McCain responded, then tell him the answer to his question of what they tell these two candidates; Mr. Dodd responded, Council is moving on with the process. Mr. Holloway said they did not get the votes. He said it is really simple, that is the way the vote went. Mr. McCain then asked Mr. Wilber if the Resolution on Thursday night is now a moot Resolution and no longer any legal effect, to which Mr. Wilber responded, correct. He explained, that Resolution no more has any legal effect, so, from that point forward, it is up to Council to decide whether they want to hold a vote on a candidate before September 9, or do they want to just, as they have been discussing, proceed into taking new applications. He said that is up to Council. Mr. Dodd said he thinks that is what the majority consensus wants.

Mr. Hastings asked, if Council does indeed want to go forward with setting a new timeframe, they need to set the rules, and it would be nice if they could set the date here and now. He said, among the well over 100 emails and texts he got in support of Mr. Anderton, he also had numerous folks reach out who did not feel the process Council went through was as helpful as it could be. He said Council asked eight questions to the three individuals who actually spoke out, and then of course the public did not have an opportunity to ask or submit questions. He then suggested, maybe if they are to go through this process, they could have a way to either have the public submit questions, or, more importantly, maybe have the public be a little more participatory in this process. He clarified, of course he wants to make it clear that it is the seven of them who choose the next individual, but he does think the public is a pretty important part of this equation. Mr. Dodd said, if Mr. Hastings received over 100 emails, he is suggesting that is public participation. Mr. Hastings said yes, and they were all clear to one candidate, and not anyone else. He said, going forward, he thinks it would be nice to be able to have more of a public process. He said, if the majority of Council does indeed want to go forward and have a new process, then he says they should revamp it and make it a better process so there is more public participation. Mrs. Acle

asked, would that be a Charter amendment or a Charter change if they are going to revise the process of selecting a County Executive? Mr. Hastings clarified, to be clear, when he says process he means just asking questions, not going through a different Resolution or anything. He explained, he specifically means having the public more involved with asking questions, or participating on some sort of level.

Mr. Holloway said Council is having enough trouble finding a candidate anyway. He said they are talking about a County with over 100,000 people, and Mr. Hastings said he got 100 emails, but that is a very small percentage. He said, out of more than 100,000 people, they only had three people who were eligible to really apply, so that is not a very large pool to choose from. He said he thinks staying with where they are at, as far as the questioning, as far as he is concerned, it was fair, other than he thinks probably some of the candidates may have had the questions ahead of time, from his understanding. He said maybe they can improve on that a little bit next time. Mr. Dodd suggested, they can include more questions and get more detailed. Mr. Hastings said it was mentioned that Council did not mention agriculture at all, to which Mr. McCain added, there were no questions about education either, which is the biggest part of their budget. Mrs. Acle said, actually, they had a response on education, which was the STEM program for schools, to which Mr. McCain responded, the word STEM was mentioned one time. Mrs. Acle clarified, she is just saying that they did have a comment about it. Mr. Holloway suggested they not argue about what they did not do, but move forward with what they are going to do.

Mr. Holloway said they have a consensus to open the process back up, and he thinks that is the direction they should head.

Mr. Dodd said, if there is no further discussion, they will move for adjournment, to which Mr. Cannon responded, he does not think they are done. He then asked how long they are doing this? He said this is an Open Work Session for the public to know how many days, to which Mr. Holloway responded, they have not set a time. Mr. Cannon clarified, that is what he is asking. He said they need a consensus on this. He said he needs to know exactly what they are going to do from here. He then asked if they are going to have a Public Hearing on this, and what might the process be? He said this is a Work Session. Mr. Dodd then asked Mrs. Hurley what the process might be, to which Mrs. Hurley responded, she thinks what Mr. Cannon is asking is, besides opening up the application process, does Council want, as Mr. Hastings suggested, a public input session? She said she does not know if Council wants the public to actually interview the candidates, but at least have a public input session, and then, obviously, Council would need to interview the candidates. Mr. Dodd said, if they do that, he would recommend doing it on two different nights, to which Mrs. Hurley responded, absolutely.

Mr. Cannon said he thinks this is just as important, if not more important, than most Legislative Bills Council has ever passed where they have Public Hearings, so he thinks they should have a Public Hearing on this. He said everybody can say anything they want about how many emails they got, or how many phone calls they got, but he does not think the real true test of what the public is asking for is going to be obvious until they have a Public Hearing. Mr. Dodd said it is not in the Charter to have a public input session, but he is agreeing they can do that, to which Mr. Cannon responded, he recognizes that. Mr. Dodd again said he is agreeing they can do that.

Mr. Cannon said he thinks Council needs to know what they are going to do. He then asked if they are going to do another 45 days, or exactly what are they going to do? He said he thinks the public needs to know what Council is going to do. Mr. Dodd then asked Mr. Holloway if they need to nail it down right now for a date, to which Mr. Holloway responded, no.

Mrs. Hurley then asked Mr. Wilber and Mr. Taylor, if Council were to open up the application process for a specific time period and no applications come in, do they just keep extending it, or should they just have it where it is open until someone who is qualified applies, to which Mr. Wilber responded, his personal opinion about a process is they should have a definite certain date to apply by. He said they all know by the Charter that Mr. Psota will continue to act as County Executive until the Council appoints one, so he thinks they should have a definite date. He said hopefully there will be applications that will come in, and then, as Council has been discussing, if they have a Public Hearing, that is fine, or if they just have a Council Hearing, that is fine. He said the Charter does not guide them, so Council has to make up their own process. Mr. Taylor said he agrees with Mr. Wilber, and he thinks Council would be wise to have a certain time for filing applications, and, as he said earlier, he knows Mr. Holloway feels a little different, but given the fact that this has gone on for some time, he thinks that deadline should be pretty soon, sometime next week he believes, and then Council can get on with the process. He said, if nobody applies, then they are kind of back to square one. Mrs. Hurley said that is where she is going with that because the last time they set a date, no one applied until the very last day, to which Mr. Taylor responded, that could happen again, but, if Council has a deadline, then they know what the very last day is, and that at least gives them that. He said nothing happens unless they have a deadline, just like when he was in high school and college studying for a test, it was the night before.

Mr. Holloway suggested September 15. He explained, they have Labor Day involved and holidays, which takes a lot of people out of the loop, so he would suggest September 15. Mr. Dodd asked Mrs. Acle if she is okay with that, to which Mrs. Acle responded, she would just like to have this done as soon as possible, and she thinks the 15th is reasonable. Mr. Dodd then asked Mr. Davis if he is okay with that, to which Mr. Davis responded, he is fine. Mr. Hastings said September 15 is a Council Meeting day, so it might be nice to let the public know that Council is moving through this process, and Council could announce who they have. He then suggested they make it at the close of business on September 14, to which Mr. Holloway responded, the date does not matter. There was no further discussion.

Signatures on next page


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Larry W. Dodd, President, District 3



John T. Cannon, Vice President, At-Large



Ernest F. Davis, District 1



Nicole Ache, District 2

Josh Hastings, District 4



Joe Holloway, District 5



William R. McCain, At-Large



Laura Hurley, Council Administrator