

Open Work Session
Legal Services for Wicomico County
November 19, 2019

Mr. Cannon said this dovetails right back to the same set of circumstances where Council has scheduled a meeting with the Executive to discuss legal services for Wicomico County, and they have a ghost Executive who chooses not to appear at any meetings, which just really is not a productive way to try to run the County. He said, as it is right now, Mr. Paul Wilber is, he is assuming, in meetings and signing documents as the County Attorney, but Mr. Wilber is no longer the County Attorney as he has not been approved by this Council, and the 90-day extension has expired. He clarified, again, by law, he no longer legally represents, and is no longer legally authorized to represent Wicomico County whatsoever. He said the concerns are what happens when the County needs to go to the banks for bank loans, what happens when they are trying to ratify contracts, and what happens when Resolutions come to this table that are supposedly required to go through the County Attorney before they come before Council. He said all contracts are required to go through the County Attorney before they are even signed, but they do not have a County Attorney.

Mr. Cannon said the purpose of this meeting today was really to try to find some appropriate resolution to this rather than continuing down this road of conflict, but the refusal to cooperate continues, and he thinks the dysfunction more than anything is what their constituents find to be so deplorable, and he cannot help but agree with that. He said he has stated in more cases than not that they look at how the City of Salisbury is being run, and the cooperation between the Mayor and the Council, and the cooperation between the Mayor and everyone in the community, and they can see how Salisbury is continuing to grow. He said he would like to have that same set of circumstances for Wicomico County where they resolve those differences that benefit the County, and get this ridiculous conflict out of the way because there is no need for it, and it is so counterproductive. He said, again, they have a Work Session scheduled for discussion on the County Attorney because legally this County does not have a County Attorney, and that is a very scary situation for them to be put into as a County.

Mr. Taylor said, as Council knows, instead of coming today to discuss things, on Friday the County Executive sent Council a letter from an outside law firm either he or the County apparently retained, but he does not know which because it is a little hard to tell from the letter. He said this letter argues that Mr. Wilber could continue as the County Attorney, and he wrote a memorandum regarding that since he does not think that is the case. He said he would suggest sending that memorandum to the Executive and Mr. Wilber to at least avoid any notion that Council has somehow acquiesced in what he sent on Friday. He said, beyond that, there are other things Council can do, which they talked about once before, such as contacting the courts and putting them on notice that he is not really the County Attorney. He said, again, it is up to Council how they want to proceed. Mr. Cannon said these seem like very extreme measures, but it is not a knee-jerk reaction, and the public needs to recognize the fact that this is a process that has been going on for over a year. He explained, Mr. Wilber was first informed of this a year ago, and the Executive Branch was informed of this over a year ago, so they knew quite well what was pending and chose to ignore it. He said more recently, prior to the 90-day extension, there was a lot of concern and exaggerated appeals that Council has to extend this, and they cannot possibly work without this. He said Council left it as it might be, and the 90-day provision went into effect, but even after 90 days still nothing more was done. He said now, as opposed to trying to address it again legally, it has just been said they are going to continue with this process. He said Mr. Culver seems to

suggest that the Charter is not really law, and he has stated publically that it is just a guideline to go by. He clarified, this is not the bylaws for the Boy Scouts, it is State Law, and they are held accountable to it.

Mr. Taylor said it is worth noting that Mr. Cannon mentioned a year, but it has actually been since Mr. Wilber was removed by Council back in May. He said it has been almost six months when he knew, to which Mr. Cannon responded, that was when it was official, but the first attempt to make them aware of these circumstances was November 2018.

Mr. Dodd asked if hiring an outside attorney is something that has to be approved by this Body, to which Mr. Taylor responded, the attorney has to be nominated by the Executive and confirmed by the Council. Mr. Dodd clarified, he is talking about the attorney who wrote this letter, to which Mr. Taylor responded, under the Charter, to have special outside legal counsel, that has to be approved by Council.

Mr. Hastings asked if there is a way they can get guidance from MACO. He said he knows this is a larger trend in government across the country and they see this with the President of the United States right now where individuals in Executive roles do not want to pay attention to rule of law. He then asked if there is a model that is currently in place, or something that MACO might recommend as a way to put teeth into the Legislative Body if there is a misstep. He said the Executive tends to roll over current law, and there should be recourse that should be put in the law. He then asked if they have the ability to create that recourse, or to create the teeth in the law, to which Mr. Taylor responded, he thinks, first of all, MACO would probably treat it like a hot potato, but yes, there is a way. He said the Charter could be amended, and they could actually have an impeachment provision so it would not be unconstitutional. He said he does not know of any County that has that, but he actually has looked at a few Charters just out of curiosity, but that would be one thing. He said he guesses another way to do it would be putting some sort of a penalty provision, either monetary or other. He said the problem with all of these things is then they get into further disputes about that, and it would not be self-executing, so he thinks, unfortunately, it is just one of those things. He said the alternatives, to him, are to put the courts on notice, and also to put other people on notice generally, either by doing a press release to the media so people know because he does not think that many people watch PAC14 and are listening to this today. He said there are other ways of spreading the word, and those would be some ways to do it. Mr. Cannon said he does not really think MACO has any guidelines to go by, and he thinks this is really such an extreme case, and he does not think they have any cases to justify it. He said he thinks it is a little more irrational than other Counties in the State of Maryland have experienced. He said it is also one where they have to be very careful about going down a real slippery slope where it could become political. He said, in this case, they have a majority of republicans here, and they have a republican Executive, so there is not a political issue here, but in some Counties if it is a democratic or republican Council and the opposing party is the Executive, they could take advantage of any extreme measures for censorship or removal from Office, so that is what creates what he would say is a very slippery slope. He said, again, it is such an unusual set of circumstances they are faced with here that, Statewide, he does not think they are really prepared to know how to give them that advice. He said, as Mr. Taylor said, it is probably going to have to come from Council in some type of Charter amendment.

Mr. Dodd said they cannot continue to go down this road, and Mr. Hastings has a good idea, which he mentioned at the last meeting, and they need to sharpen their pencils and start looking at some amendment changes to the Charter.

Mrs. Acle said she has a question about the letter from the attorney, Mr. Karpinski. She said is says that he represents the liability insurance carrier, to which Mr. Cannon responded, he does not say in the

letter that he represents them, but at the bottom of the letter he does note that the insurance company has asked him to sort of be a mediator, which he felt was very unusual because LGIT does not take that role. Mrs. Acle said she is not really familiar with LGIT and that process, but if the Executive side is using LGIT, does Council have the same option of getting an attorney from LGIT, to which Mr. Cannon responded, that is a good question, but, as he understands it from what Mrs. Hurley has said, LGIT usually only gets involved if there is a group that is filing a claim against the County, and in this case no one is filing a claim against anyone, so they are sort of a bit confused as to why LGIT was brought into this. He said Mr. Karpinski does not say he is representing LGIT, even though he does representation for LGIT. He said, in this case, he seems to be acting independently, but in the last paragraph or two he says, by the way, LGIT is suggesting he could maybe arbitrate for Council, which sort of came out of leftfield. Mrs. Acle said she just questions that, and if Council has the same luxury of using an attorney from LGIT, but she does not know. Mr. Holloway said they first need to find out who really hired Mr. Karpinski, and they need to know whether the County Executive's Office hired him, or if they called the insurance company and the insurance company stepped in and is paying Mr. Karpinski's fee. He said he thinks Council needs an answer to that, so that could be a letter sent sooner rather than later, he would think. Mr. Taylor said he would suggest sending it first to the County Executive, and, if he does not respond, then they could contact Mr. Karpinski. Mr. Holloway said they could send letters to both of them, but he thinks it would be wise to find out who is paying the bill.

Mr. Holloway said, regardless of who the County attorney is or was, if this attorney is not appointed or confirmed and they end up in a court proceeding against someone and the defendant is found guilty, and then they find out this attorney is not really a confirmed attorney of the County, would that jeopardize the case, to which Mr. Taylor responded, he honestly does not know because he has never been involved in that situation. He said he has been involved in a couple of situations where the other party's attorney was discharged by that party, usually right before a trial to keep a trial from happening because then they can come in and say they do not have an attorney. He said there is a special rule for that which allows a very short period of time in which the client must get another attorney, but he has not been in the situation where it has actually gone to trial and there has been a decision, and then somehow it has been raised. He said he thinks it would normally only be if the prevailing party was represented by an attorney who was not authorized. He said, if it was the loser, no one would care. Mr. Holloway said he thinks this puts them in some real shallow water about where they are operating.

Mr. Hastings said this is the larger trend in government, and this is not something he thinks is going to go away any time soon, so he thinks, unfortunately, they need to start looking at parameters to be able to have recourse in these kinds of actions. He clarified, it is not just this Body, but it is Counties across the country, and they see this across the world. Mr. Taylor said he does not disagree, and MACO may at least be a source of some information in that regard. He said there is also the group they joined, IMLA, and he can query them and see if there is anything from anywhere. Mr. Hastings said, if it is helpful for them to take another look at their Charter and how they operate between the Legislative and Executive Branches, then maybe there are a lot of recommendations that could be put together. He said maybe that is something where they could sit down with a mediator and come up with a broad spectrum of options. He said, as a whole, they all just want to play with the rules as they are put in place, and there are things Council does not have to handle, or things they could handle more, but, above all else, they just want to play by the rules that are set in place. He said it may be that they need to add additional rules in order to have a fair game. Mr. Cannon clarified, they are not rules, they are laws, to which Mr. Hastings responded, laws are rules, for the record. Mr. McCain said that is why they had the Charter Review Committee, and it seems they have brought this up before. Mr. Holloway said the Charter is very specific on what the rules or laws are, but the problem with the Charter is there are no ramifications for

when they are broken, and that is the problem with the Charter. He said, if they read the Charter, it tells them what they are supposed to do, and what they are not supposed to do. Mr. McCain said that is a question that needs to be posed to the Charter Review Committee for them to consider, to which Mr. Cannon responded, he thinks Mrs. Hurley has that on a list as one of the points to address with the Committee when they are formed.

Mr. Cannon thanked Mr. Taylor for his review of this, and the research he did. There was no further discussion.



John T. Cannon, President



Larry W. Dodd, Vice President, District 3



Ernest F. Davis, District 1



Nicole Agle, District 2



Josh Hastings, District 4



Joe Holloway, District 5



William R. McCain, At-Large



Laura Hurley, Council Administrator