

Special meeting December 31, 2007 – Year end items

Present: Trustees Bill Habig , Lyle King & Wes Sargent, Fiscal Officer Norm Kennedy

Guests: Trustee-elect Fred Abraham, 1901 James Rd
Kenneth Oswald, Licking County Prosecutor
Travis Binckley

The meeting was called to order at 8:30AM.

FO Kennedy reported that this special meeting was advertised by a notice published in the Advocate and that he had notified Sentinel Editor Chuck Peterson and asked him to put the information in the Sentinel's electronic bulletin board of community events.

On a motion by Trustee Sargent and a second by Trustee King, by a unanimous affirmative vote the minutes of the December 12, 2007 meeting were approved as previously submitted.

F.O. Kennedy stated there was a question when Mr. Abraham announced his candidacy for Mr. King's trustee position if there would be a possible conflict since Mr. Abraham leased a garage to the township. Mr. Abraham researched the matter and obtained a Bulletin from the Ohio Ethics Commission – *Selling Goods or Services to Public Agency – Ethics Commission Information Sheet #2*. He believed that he met the four-part exception outlined from R.C.2921.42 for providing a service to the township and being a Township Trustee. Mr. Abraham indicated that this was correct.

The Trustees contacted the County Prosecutor regarding the issue and asked him to research the matter.

Trustee Sargent indicated that Ken Oswald, the Licking County Prosecutor, was present to discuss the situation. Mr. Oswald stated that the information reflected in Ethics Commission sheet #2 as written is deceiving because it leads the reader to believe that some form of business relationship is permissible, when in fact the person must meet both the requirements of 2921.42 and another section of the R.C. relating to townships which is 511.13. The Title V section is related to township law, with 511.13 having been passed in 1953. The 2921.42 section is related to the ethics laws of the state, passed originally in 1973, and amended several times in the mid 1990's and again in 2007. Because the permissible exceptions in 2921.42 as they currently exist are not compatible with the sole exception under 511.13, Mr. Oswald thinks that the legislature should have *either* repealed section 511.13 when it passed 2921.42 originally or at least during one of the many amendments that occurred some forty years later, or they should have at least harmonized the possible sections to allow for a permissible exception to serve as an exception to both provisions. Unfortunately the legislature did not do either and appears to have inadvertently left conflicting sections of the code in place.

Mr. Oswald indicated that in October, after he became aware that Mr. Abraham leased garage space to the township, his office sought an opinion from both the Ohio Attorney General and the Ohio Ethics Commission regarding this potential situation. The Ethics

Commission has the authority to interpret 2921.42 regarding unlawful interests in public contracts. The Attorney General oversees 511.13. He had hoped that the two entities might issue a joint opinion so that the conflicting sections could be put into a logical order. Since the question was only a possibility until Mr. Abraham was elected, neither entity would provide a response until after the election in November. After the election Mr. Oswald called both entities and told them since Mr. Abraham won the election he needed their opinions. He was told they would respond by the end of the year. The Attorney General issued opinion 2007-044 on December 13th which was received in Oswald's office on December 16th. The Ethics Commission still has not responded, but has told him they are working on an opinion.

Basically the OAG opinion indicates that Mr. Abraham has two remedies to the problem. The first is to refuse to take the office of township trustee. The second is to divest himself of his interest in the contract with respect to the garage. The OAG opinion did not elaborate on what exactly would be necessary to constitute "divesting" of the interest, and instead seemed to allow both the Trustees, and the county prosecutor to use their discretion in this area.

Mr. Oswald stated that the township could engage in a contract with someone else for its garage services. However, it appears to be the consensus of the board that right now there are no other facilities in the township to which the trustees could move. F. O. Kennedy indicated that the officials had looked at the only other available large garage building in the area which is the former G & L Mower building on Westgate Drive. Unfortunately the building is not heated beyond the first 20% of the building which contains office space. The walls are cinder block and not insulated. It also does not have adequate garage doors and property around the building for access and storage. (In the interests of full disclosure so that it could not later be perceived that he was encouraging the township to take this particular action to benefit a friend, Mr. Oswald indicated that he wanted the Trustees to be aware that he is friends with the real estate agent that has that building listed and she has a family ownership interest in the building. Mr. Oswald himself has no interest in the building whatsoever.)

Trustee King stated that he has been considering that the township should build its own facility. Mr. Oswald asked how long that would take to accomplish the construction of a new garage building. Trustee King said between a year and a year and a half. Mr. Oswald said that the trustees must balance competing interests of: a) the township must have a facility tomorrow because it can't realistically be expected to park its equipment outdoors; b) build our own facility will take a period of time; and c) since 60% of the voters supported Mr. Abraham they want him as their representative.

The Trustees must decide if Mr. Abraham's situation fits under the provisions of 2921.42, subsection (C), the entirety of which was read by Mr. Oswald for the board, but which may be summarized as:

- 1) Is he providing a necessary good or service?
- 2) Is the transaction part of a continuing course of dealing for something that is not readily available elsewhere?

3) Is the treatment of the township the same as it would be for another purchaser of the service?

4) Was the transaction conducted at arms length and did Mr. Abraham play any part in the trustee's deliberation, or decision?

Mr. Oswalt does not believe that Section 511.13 "trumps" section 2921.42. Instead, both have to be complied with – 511.13 by some conduct that amounts to Mr. Abraham "divesting" himself of the interest in the contract; and 2921.42 by meeting the exceptions of subsection (C),

If the Trustees determine that the four items above have been met and decide that they want to build their own building he can support a short term garage lease made with an independent third party for no more than 18 months. At the request of the township, he has looked at proposed leases that Mr. Abraham has prepared for his lease to a third party and the proposed third party's lease with the township. It appears that the leases are worded in such a manner that Mr. Abraham has no recourse to the township (interest in the contract) and that the township has no direct responsibilities to Mr. Abraham, thus arguably serving to "divest", in Oswalt's opinion, Mr. Abraham of his interest in any contract with the township Mr. Oswalt indicated he would not approve a lease for longer than 18 months in duration.

As an added precaution, Mr. Oswalt mentioned that it might be advisable that once Mr. Abraham takes office the Trustees request another opinion from the Attorney General as to whether, in their opinion, this third-party lease arrangement sufficiently serves to "divest" Mr. Abraham of his interest in the contract the township would now have with the third-party lessee. Until this opinion is received Oswalt thinks that the township's payments to the third party lessee should be made into an escrow account. In this manner money is being set aside for payment of the rent to the third-party lessee but it would not become his property until the possible conflict matter is resolved. In addition, Mr. Abraham must also abstain from any involvement in this contract. It was suggested by Mr. Oswalt, but not required, that Abraham consider not voting on any matters related to the new facility if the vote may be one that could fairly be perceived as being steps to delay the township's efforts to build a new facility, and thereafter vacate the current garage

Trustee Habig asked for a clarification of the criteria in 2921.42(C) that must be met. Mr. Oswalt said that 1) the leasing of the garage must be a necessary service, 2) it is a service that is unattainable elsewhere and is a service that has been a continuing course of dealing [prior to Mr. Abraham accepting his office as a Trustee], 3) Mr. Abraham's treatment of the township in the lease is either preferable or the same as that for another party, and 4) the entire transaction must be conducted at arms length with Mr. Abraham playing no part in the Trustee's deliberation.

Trustee Sargent stated that the Trustees need to put in place the best solution for an imperfect situation. There are competing interests: a) the voters want Mr. Abraham to represent them. b) the Ohio Attorney General opinion was just issued and received and the township is not in a position to move by January 1st, c) the township's proposed

contractual obligation would be with a third party and not directly with Mr. Abraham, d) the trustees would take steps to ask the OAG if the lease situation complies with his prior opinion and therefore resolves the problem, and e) the monthly rent payments could be escrowed to be returned to the township if this is still deemed to be a problem.

Trustee Sargent asked about the five year lease that is already in place, beginning January 1st that was approved at the Trustee's meeting last August. Mr. Oswalt indicated that assuming Mr. Abraham agrees, the lease that is scheduled to take effect tomorrow should be voided. Mr. Abraham indicated he would agree to the voiding of that lease.

On a motion by Trustee King and a second by Trustee Habig, by a unanimous affirmative vote the following resolution was approved:

- 1) The Granville Township Trustees agree to void a garage lease entered into with Mr. Abraham on August 22, 2007.
- 2) That the Trustees agreed that they have considered and assessed the following requirements of ORC 2921.42(C) and believe that each of the four requirements has been met:
 - a) The service being provided [leasing of the garage facility at 462 S. Main St.] is necessary for the operation of the township.
 - b) That the leasing of the garage is part of a continuing course of dealing having first leased the facility at 462 S. Main St. beginning November 1, 2000 [lease document date August 7, 2000] which was a time prior to the election of Mr. Abraham to the position of Granville Township Trustee.
 - c) That the leasing of the garage at 462 S. Main St is on the same or better terms as other customers or clients of Mr. Abraham.
 - d) That the transaction has been conducted at arm's length, with the township trustees having full knowledge of Mr. Abraham's interest in the providing of the garage facility and that Mr. Abraham, who does not take office until January 1, 2008, has not taken any part in the township trustee deliberations or decision with respect to the transaction.
- 3) That Trustee Chair Sargent is authorized to execute a sub-lease between the township and a third party to whom Mr. Abraham leases the garage (currently expected to be a Guy Manos) for a term of no more than 18 months beginning January 1, 2008, for a monthly rent of no more than called for in the lease dated August 22, 2007 which has been declared void, provided this sub-lease is on the terms as discussed, and also upon the terms that this third-party must agree to escrow the monthly rent until an opinion is received from the Ohio Attorney General.
- 4) That effective upon taking Mr. Abraham office on January 1st the Trustees ask that the County Prosecutor request an opinion from the Ohio Attorney General regarding the sufficiency of the sub-lease with this third party to divest Mr. Abraham of his interest in this public contract for the lease of garage space.

Fiscal Officer Kennedy discussed the need to establish a reserve for the future purchase of fire equipment under ORC Section 5705.13(C). At the present time the fire department has nine pieces of equipment of varying ages with an original cost of approximately \$2.6 million. Each year the equipment depreciates thru wear and tear as a result of usage. The equipment is also one of the components in the ISO rating system which penalizes older equipment with respect to its ISO rating value. [Note: ISO stands for Insurance Services Office, Inc. which conducts a periodic evaluation of the fire department. This evaluation is used to establish a class or category of service provided by a department. The classes, range from Class I to Class X, and are used to determine insurance rates].

The private corporation with which Granville Township contracted prior to 2007 followed a policy of “funding depreciation” by accumulating funds with which to purchase/or refurbish the fire department equipment without having to borrow money to make the purchase and having to pay interest expense. This money was transferred to the township when it ceased operation and placed in the Fire Fund at the time the township assumed responsibility for its operation. Chief Hussey has completed an analysis of the equipment, its purchase price, its estimated year of replacement, its estimated cost of replacement in that year, the annual depreciation to be funded and the current balance that should be on hand at 12/31/07 to meet this funding schedule (ie: equipment reserve).

Section 5705.13(C) permits the establishment of such Capital Reserves for the purchase of equipment. F.O. Kennedy indicated that he has discussed this matter with a representative of the Local Government Section of the Auditor of State’s Office and has prepared a resolution for the creation of a Capital Reserve in newly created Fund 4902. The section under which this reserve can be created requires that an equipment reserve not be established for more than ten years. Fire Equipment typically has a useful life of from 10 to 25 years and therefore the money accumulated to acquire equipment could be needed for expenditure sometime after the permitted life of the Reserve. The AOS representative suggested that at the end of the initial ten years the Capital Reserve Fund could be re-created for subsequent ten year periods, however he advised this possibility should be reviewed by local legal counsel. Kennedy stated he has made such a request of the Prosecutor’s Office and expects a response sometime in January. Kennedy envisions that this Capital Reserve Fund will have annual contributions and periodic disbursements as the Township Trustees approve the future purchases of fire equipment (such as the \$600,000 expenditure for a new engine/rescue vehicle to replace the 1992 rescue and 1989 fire engine as planned in 2008). After a period of discussion: On a motion by Trustee Sargent and a second by Trustee King, by a unanimous affirmative vote it was agreed that:

- 1) In accordance with Section 5705.13(C) a taxing authority of a subdivision, may establish a capital projects fund for the purpose of accumulating resources for the acquisition, construction, or improvement of “fixed assets” [which includes vehicles] of the subdivision.
- 2) The source of the money shall be a portion of the funds carried over from the Granville Volunteer Fire Department Inc. at the time it discontinued operation, current and future annual appropriations from the Fire Fund [2191] to be transferred to the

Capital Projects Fund [4902] and the direct credit of investment/interest earnings on the money so accumulated in the Capital Projects Fund [4902].

3) The amount to be established as of 12/31/07 is based upon an analysis of the equipment of the fire department and its future needs. At least annually the Fire Chief is to prepare such an analysis for comparison to the amount being accumulated for the acquisition of specific fire department fixed assets.

4) In accordance with ORC 5705.13(C) the money so set-aside may not be accumulated for more than ten years after this resolution is passed; and the money not utilized for the purchase of such fire equipment shall be transferred back to the Fund from which it was originally transferred or to the Fund that was originally intended to receive the money; and the Capital Projects Fund so established may be rescinded. The Fiscal Officer is asked to work with the County Prosecutor on the mechanics of the operation of this reserve fund as discussed above.

5) The amount to be established as of 12/31/07 is \$1,283,500.00.

Fiscal Officer Kennedy indicated that he has received a proposal from VSP for a vision plan for the township to be added as a fringe benefit. The total estimated annual cost of the program would be less than \$4,000. Coverage is provided for annual examinations and lenses with frames. There is a co-pay for each service. Participants are able to make supplemental payments (at a discounted rate) to purchase upgraded services.

On a motion by Trustee Habig and a second by Trustee King, by a unanimous affirmative vote it was agreed to adopt a vision insurance program for the township employees and officials beginning March 1, 2008. The contribution rate is to be:

	Bi-weekly	Monthly
Contribution (Single or Family)	\$1.10	\$2.40

Fiscal Officer Kennedy reported that he requested and received a final Amended Certificate of Estimated Resources for 2007. As the Certificate recorded the reduction of estimated revenue in the Open Space Fund by \$100,000 there were no additional appropriations to be recorded and approved by the Trustees. On a motion by Trustee Habig and a second by Trustee King, by a unanimous affirmative vote it was agreed to accept the reduction in estimated Open Space revenue as reflected in the final Amended Certificate of Estimated Resources for 2007.

On a motion by Trustee Sargent and a second by Trustee King, by a unanimous affirmative vote the following appropriation transfers were approved:

From 2191-760-750-000 Fire Equipment	1,283,500.00
To 2191-910-910-0000 Fire transfers	1,283,500.00
From 1000-410-323-0000 Cem Equip R&M	5,000.00
To 1000-410-319-0000 Cem Prof Serv	5,000.00

On a motion by Trustee Sargent and a second by Trustee King, by a unanimous affirmative vote the following warrants, debit memos, EFT's and any Then and Now Certificates included herein, issued since the last meeting, were approved for payment:

DM107	Columbia Gas	13.00	DM108	Windstream	397.96
DM109	Village of Granville	48.60	DM110	AEP	485.61
DM111	Village of Granville	89.90	DM112	Columbia Gas	1435.62
DM113	AEP	219.34	DM114	Windstream	411.55
4758	Norman Kennedy	1078.63	4759	Shelly Materials	237.41
4760	Waste Management	182.20	4761	Morton Salt	1148.75
4762	Morton Salt	4783.37	4763	Bishop Scovell Insurance	5265.00
4764	ASHI	557.74	4765	Poggemeyer Design Group	14105.00

I hereby certify that the funds were on hand or in process of collection and properly appropriated for payment of the aforementioned warrants.

 Norman S. Kennedy, Fiscal Officer

The meeting was adjourned at 9:35AM.