

**Evanston City Council  
Closed Session Minutes  
Aldermanic Library  
Monday, June 27, 2005**

PRESENT: Aldermen Bernstein, Holmes, Moran, Tisdahl, Rainey, Hansen, Wollin, Jean-Baptiste and Wynne

STAFF: Judith Aiello, Julia Carroll and Herb Hill

PRESIDING: Mayor Lorraine H. Morton

START: 12:45 a.m.

Alderman Tisdahl moved that Council convene into Closed Session for the purpose of discussing matters related to litigation and closed session minutes pursuant to 5ILCS Section 120/2 ( c) (11) and (21). Seconded by Alderman Rainey.

Roll call. Voting aye – Bernstein, Holmes, Moran, Tisdahl, Rainey, Hansen, Wollin, Jean-Baptiste and Wynne.  
Voting nay – none. Motion carried. (9-0)

**Minutes**

Closed Session minutes of June 13, 2005 were accepted without change.

**Litigation**

**Kahn vs. COE**

1<sup>st</sup> Assistant Corporation Counsel Herb Hill reported Council authorized \$975,000 to settle the Kahn case and it was settled for \$850,000.

**Prado/DeVaul vs. COE**

Mr. Hill reported an agreement was signed between the plaintiff and the City on the numbers. They are now trying to figure out how to get this matter back to the Circuit Court in order to vacate the judgment. He cannot guarantee that will happen. The case was settled for \$6.5 million.

**Status of Insurance Fund**

Mr. Hill passed out a report that showed, the Insurance Fund had \$19, 910,000 in exposure in November 2004. Since then they have picked up one bad case, the Hotchkiss case, and settled one case. Currently, the Insurance Fund exposure is \$1,445,000 and is in good shape.

Mr. Hill asked for authority to settle a slip and fall case that will go to trial July 5 or 6. A 79-year old man fell at Greenleaf/Chicago. Damages are about \$9-10,000 due to a broken left wrist and left elbow. Mr. Hill offered \$25,000, the maximum he could, and believed the case could settle for \$35,000. There is a good witness. The man fell on an asphalt patch placed on the sidewalk. Based upon three photographs of the scene, City attorneys filed for summary judgment but were not successful so the case is either to be settled or goes to trial. The man has made a good recovery except for his wrist which has some arthritis. Alderman Rainey asked what has been done to correct the patch. Nothing has been done. There was discussion among aldermen about various places there are patches and holes. Alderman Wynne moved that Mr. Hill be authorized \$35,000 to settle. Seconded by Alderman Moran.

Motion carried unanimously.

**Litigation - Election Contest 1<sup>st</sup> Ward**

Jack Siegel wrote an opinion about the election contest. Copies of his opinion were handed out at the meeting. Mr. Hill stated the Election Contest would be heard by the City Council. Attorneys for defendant Cheryl Wollin filed a motion to dismiss, alleging that the fraud counts are not enough to overturn the result of the election and are improper to be before the City Council. Northwestern University is trying to get the two counts in Circuit Court moved to a federal court. The question for City Council is how to proceed in this matter. A motion was filed by one side and the other side will file a motion with City Council, the final arbiter of that motion. One procedure could be

that Council sets aside time at a regular or a special meeting and gives each side a half hour to present their argument. Then Council, by vote, would determine the result. There was an attempt to have a hearing officer hear the matter but attorney's for one side refused. The motion is not yet joined because they don't have the petitioner's response. That motion will be decided by the Council at a public meeting in which there would be argument by both sides.

In response to Alderman Wynne, Mr. Hill said the substantive count is before them. Those are the 220 students who allegedly were induced by improper methods to vote. The remedy being asked for is to change the number of votes. The action at Circuit Court is not to change the number of votes but to find NU liable and fine them. This Council has the authority to determine the number of votes but no guidance as to how to do that. A motion was already filed not to look at the intent of the voter- meaning the voter is brought in, deposed, testifies in front of Council and says why they voted. The argument is that is improper for the Council to proceed. That would be decided on the basis of a motion which is one aspect of the case.

Currently the posture is when a motion is filed Council needs to devise a method to hear and decide on the motion. After that is a secondary category. The Fiske group has already submitted subpoenas and discovery requests which will not be acted upon until the matter is joined. The jurisdiction issue needs to be decided first but then the question is uncertain. There does not appear to be a basis for Council to issue subpoenas based upon state statutes. Council could handle this by authorizing that subpoenas be issued to 14 or 15 officials, plus books and records at Northwestern University. NU would come in with a motion to quash and the City Council would hear the motion to quash on a jurisdictional basis.

Another approach is the classic "do nothing" approach. If the federal court heard the matter, Council could take the position they did not want to duplicate it. The federal court has discovery power. The City could adopt the federal court's findings. If the Council did that, he guaranteed one of the two parties would file a mandamus action to make the Council hear the matter.

Alderman Rainey noted that Mr. Hill has no experience in this area of law and asked who was advising them. Mr. Hill and Mr. Siegel are advising them. The issue now is the motion to dismiss. Council will get another set of reasons and any good attorney could give them a review on that. If the parties were to agree to have a hearing officer, the hearing officer could provide a transcript and a recommendation. Council could read the transcript and make a decision on that basis.

Alderman Wynne asked if the City considered appealing Judge Bertucci's decision. No. Mr. Hill said that state statute reads that Council is the sole judge of its members. They are looking at a current case and the 1997 Countryside case that many cite as to what the statute means. The court ruled Council could not change the vote in the Countryside case.

Alderman Jean-Baptiste asked if what they do would be disqualified if Alderman Wollin continued to sit in these discussions. Mr. Hill said it is up to Ms. Wollin and her attorney as to whether she sits at these meetings. The statute provides that the Council make the decision and she is a Council member. There are other provisions regarding conflict of interest. She has been advised. Alderman Wollin said she would recuse herself from voting.

Alderman Bernstein asked if there are standards Council could use to make its decision. If they have to validate votes, how do they do it with 30 minute arguments by each party. Alderman Moran suggested that Mr. Hill has to figure out what Council has to figure out. Mr. Hill said there are two components to the case. There are allegations that a group of voters moved within and outside the ward. That involves 31 votes and would require that somebody go to the south side to the County's warehouse and check the master registration. That can be done at the appropriate time. Mr. Hill said the petitioner has the first burden of proof and will go down to the warehouse with their checkers and lawyers and come back with certified reports. He did not think the Council would go there. If they throw out the underlying argument regarding the 220 votes, that is not enough to change the outcome of the election. The fundamental question is what is the scope of the City's authority in regard to the "intent" question posed by this case. There are nonspecific pleadings and no allegations in the pleas as to what the considerations were.

Mr. Hill has subpoena requests from the Fiske people who are trying to get information about a party that was held on campus after the election. They want all e-mails and correspondence between Bienen, Sunshine, Stafford, Naylor

and Adams regarding advice given to students on voting in Illinois as opposed to voting in their home state. The head of housing, books and records are also being subpoenaed. The question is, were housing privileges given to students for participation in the election? Mr. Hill felt it is improbable that Council could issue a subpoena and cannot get that power by implication. If they hold a hearing, due process requires some fundamental fairness regarding depositions, cross examination, etc; asked can they get around the lack of subpoena power by saying the Council is performing an administrative function. Administrative bodies traditionally have those powers and due process is violated by not having them.

Alderman Moran asked if they can make somebody talk about their vote. Mayor Morton asked who the lawsuit was against? Mr. Hill said it was against the canvassing board only because that is the mechanism by which the votes were counted. The City Council is the arena in which the arguments will be heard. Currently the question is how is the motion to dismiss handled? They will get the arguments and Council will vote on that question.

In response to Alderman Bernstein Mr. Hill stated there is no election contest in the Circuit Court. The Circuit Court material that was remanded to the federal court has the same fact question but the remedy being sought is not to reclass the election.

There being no further business to come before Council, Mayor Morton asked for a motion to adjourn. At 1:14 a.m., Alderman Wynne moved that Council adjourn. Seconded by Alderman Jean-Baptiste. Motion carried unanimously.

Mary P. Morris,  
City Clerk