

Meeting Minutes

Oregon Public Records Advisory Council

September 13th, 2019 – 3:30 pm

State Archives Building

800 Summer St. NE

Salem, OR 97310

Members present:

Ginger McCall (in person), Rich Vial (in person), Michael Kron (on phone), Liz Craig (on phone), Les Zaitz (on phone), Steve Suo (in person), Scott Winkels (in person), Shirin Khosravi (on phone), Rob Bovett (on phone), Mark Landauer (on phone), Michael Kron (on phone), Tony Hernandez (in person), Sen. Kim Thatcher (on phone), Rep. Karin Power (on phone)

Introductions

Review of circumstances of Advocate's resignation

Ginger McCall states that the council will not come up with Legislative concepts in totality today.

Scott Winkels asks Ginger McCall about her understanding of the office and the reporting structure. Ginger says that her understanding was day to day management but not policy oversight. This was meant to be an independent office. Scott Winkels states that having looked at the documents, he's not sure that I've come to the same conclusions. Ginger responds that if the council is representing this office as independent, it needs to be truly independent.

Tony Hernandez asks if Ginger thinks the budget cuts were punitive or politically motivated. Ginger states that she thinks that DAS was still getting used to the pay equity assessment. Ginger addresses Scott, stating that if she is serving the interests of the governor and the Council, she needs to be able to disclose that.

Tony states that he supports Ginger speaking truth to power. Tony gives specific example and expresses that Liz should not shoulder the burden. Tony says he was disturbed by the mention of looking to the model of reporting that is used by the Government Ethics Commission

Les asks if the governor's office challenged Ginger's specific statements. Ginger says that they have not. Steve Suo states that he wants to counter Scott's statements. Steve says that Ginger has provided evidence that should make us deeply concerned. The future of this council should be independent. Les says that the council should not be a jury and should focus on principles.

Consider legislative action by PRAC in view of the circumstances

Ginger affirms that the council should not put out a LC in a reactive way.

Deputy SOS Rich Vial asks if the council can put forth LCs. Ginger says that the council has had the SOS draft the LCs in the past, then had members of the legislature bring them forth. Steve spoke with Legislative Council who told him that State Agencies can introduce LCs but it has to be approved by the legislature. Tony asks Ginger to explain her experience lobbying to legislators. Ginger responds that she knocked on doors, did her best, but was scrambling. There were complexities with getting the annual reporting bill passed. Karin Power states that she is committed to sponsoring this council's bills in the future. Rich asks Karin if she is limited to the number of bills she can introduce. Karin responds that she is. Ginger states that she has not heard anything from the governor's office regarding whether they will support a bill going forward. Steve floats the idea of proposing legislative concepts to the legislature at large, and see who would pick it up. Senator Thatcher says that she only gets one, but is sure the council can find a way. Tony asks if there a way to propose a law that changes who can submit concepts. Cameron Miles states that the legislature can decide. Rich states that SOS has to find support, the council doesn't have our own concepts available.

Ray Asioski, member of the public asks "how did the council get here?" Ginger answers that there the council compromises that led to the creation of the law. This might be a moment to clarify. Scott says that they lobbied against the complete independence of the office because they have not seen that be effective. Steve states that it's not working. Whatever was done, is clearly not working. Scott replies that quick fixes do not work. Ginger reiterates that this office has to be independent. What has happened here is the exact reason that it needs to be. Les says that the council needs to remember who the council are serving. The council are serving the people. The citizens have faith in this body to make information accessible related to the function of government. The council needs to make it clear to the people that the council are serving here that the council are doing that. This should not take months. Ginger thanks Les for his comment and states that it is the council's goal is to make recommendations

Rich responds that the budgeting process does not allow for complete independence, it may not be as easy as saying it. Ginger agrees that is a really good point. The council are not drafting this today, the council are talking about what our principles are. The council serve the public. For every government employee and elected official, keep in mind that the council serve the people.

Scott states that he is going through the documents, and there does not seem to be any interference into the mediation, training, asking Ginger to confirm this. Ginger says that is correct, this is focused on the legislative concepts, but also to anticipate the Governor's interest and deal with those proposals accordingly. The council had a conversation, as a council. Ginger asks if she is supposed to derail the proposals. She is not the chair of the council in order to make decisions for all of the members.

Steve says that he would like to pull together the history. He shares that this group represents groups all over Oregon. The group got together to select this advocate, and despite this, the council worked together to select her. The council was thrilled with Ginger, she is balanced. From there, the council got together and got to work. The council gathered data, the council oversaw her first report. The council now know that some of our beliefs about this process were naive. What happened to Ginger McCall should not have happened. The Council should appoint the advocate. Any colocation is only for administrative purposes. The council needs a dedicated funding mechanism. Mr. Vial, the council hears you loud and clear. The Government Ethics Commission does not have political interference in their budget. The advocate has trained thousands of public employees and that benefits all public bodies. As

Les said, can the council please commit today to a core principle that the council need to agree and move forward.

Rob Bovett says that he will echo what Steve and Tony said. As far as independence, the council do have some constraints. What I read in SB 106, it is wonky. What I drafted is a conversation starter. The council could draft the same language as Government Ethics Commission and OLCC. He wants to note that the council must meet within 30 days to meet to start the process. Ginger says that it is her understanding that she can vote to select the advocate.

Les states that he understands the technical implications of the process. Those are logistical issues that a subset of the council could work on. Our focus needs to be on what the council are looking for as a council. Let's resolve the primary point on the table today. Ginger agrees with the point, stating that the budget question might be too complicated.

Rich says the SOS would support the idea of independence. SOS feels strongly about our independence. The devil is in the details. Let's say the council proceed with a clear understanding. The reality is that timing for that means the council are waiting until February for the advocate to be confirmed by the legislature. Let's continue to look at the evidence, look at the political process. Rich states that he appreciates the perspectives of Steve and Les.

Les says that he appreciates the general caution, but it does seem that the council can act to, at a minimum, carve out the proposed changes to make the advocate an appointee of the council. On the budget issue, that is less pressing for the public. Issues of how legislation is proposed, the council have plenty of time. The council would be negligent to say the council will talk about this some more. The council need to send a message to the people of the state. Tony asks if resolutions are binding. It's important that the council vote on something today to at least respond. This comes down to trust for our government at a time when it's really shaky for the people. He is going to be an independent creator of journalism, and if corporations can't even afford public records requests, what does that say about other individuals who are off on their own looking for information. Rich and Les debate whether there is a need to ask for a special session and agree that it is not necessary.

Ginger states that the council are meeting today to flesh out the heart of what the council want to see in a legislative process. She has seen that the clear consensus from the public is for independence.

Rob has a motion for the table which is to move that the council approve that the council be as independent as possible permitted in the Oregon Constitution. Ginger says there should be public comment period.

Les states that the council needs a second for the proposal, and he will provide that. Accept friendly amendment to allow that they council appoints the advocate.

Rob says he doesn't want to lose anyone, but would accept the friendly amendment.

Ginger states that now begins a comment period, with two minutes per person.

Rory Bialostosky states that he shares the view that this office should be independent. He has seen the importance of this first hand. The public trust in this office is dependent upon the independence. Can you imagine seeking mediation not knowing if the governor's office is involved? Who do they report to? It's important to the perception. Perception needs fixing.

John Stevens – PI, public records. John states that before Ginger showed up to Oregon, it was a nightmare. Ginger’s office has really helped him. It’s very important that the council get the help from someone independent. She is a gem.

Brittany Ruiz states that the council are going to be at a loss without Ginger. She is worried about Legislative Council being held accountable.

Alan Kessler asks if there were any other pressure from other entities. Ginger answers that she had minor issues with City of Portland. SOS was very respectful of the line between the offices.

Mark Landauer says that he has deep respect for Ginger and what she has done. He is very sad for the position she has been put in. Mark doesn’t want the council to rush to decisions. He is a little bit nervous about the motion on the table.

Rob - Motion for the council – it should be established in statute that the advocate and council should be as independent as allowable in the Oregon constitution and that the advocate should be a direct hire of the Council.

Votes – Steve - Yes, Tony - Yes, Rich - Yes, Rob - Yes, Liz – Yes, Michael – Yes, Mark – Yes, Ginger – Yes. Scott – No, Shirin – No.

Rich says he will be supportive of the motion, but strongly urges the council to be deliberate.

Steve says that the council should support measures to ensure independence. He suggests as a separate motion that the council supports the concept of a standalone funding source that is not general fund. Mark asks for a clarification? Which session would this be for? Steve replies that this may take some time, he doesn’t have a strong feeling either way.

Mark speaks to the motion. Les seconds the motion. Mark is worried that the council is rushing. He would prefer to be deliberative to get consensus. The council needs to be smart and take our time. He would oppose the motion but pursue an independent funding source. Rob agrees and doesn’t want to dilute the first motion. Les states that the council is just saying the council need to explore the option. Steve agrees. Mark gives that commitment. The funding model can be high on our agenda once the council get a new advocate. The council need to focus on that first.

Mark states that the independent funding of the advocate office should be placed high on the agenda once the council hire a new advocate. That is the motion. Les seconds.

Vote – Steve – Yes, Scott – Yes, Tony – Yes, Rich – Yes, Rob – Yes, Liz – Yes, Les – Yes, Michael – Yes, Mark – Yes, Ginger – Yes, Shirin – No.

Scott to make a motion – I move that the Advocate or her designee or the deputy request from the appropriate body for a thorough and complete review of the circumstances surrounding the resignation of the public records advocate. Tony seconds. Rich asks what the objective is. Scott states that this has happened before in 2007 with the government ethics legislation, someone should review the facts and the law as they did then. Oregon Law Commission, DOJ, Leg. Council could all review the facts. Ginger states that she already took the issue to DOJ. Scott states that he wants to know what happened and when. Rich asks if Scott is looking for a third party to review this. Steve asks how quickly it resolved. Deadline? Scott recollects 60 days. Rich asks if this will cost money. Scott asks let’s explore and come

back to the next meeting. What was the problem? Conduct or structure? Todd Albert comments as the person who would be in charge of this. He would like to suggest that it is the council that requests a third party investigation. Not the advocate. SOS will be the chair when Ginger leaves. Chair of the council seeks the opinion. Ginger agrees and doesn't think she should reach out. Scott suggests amending to say the deputy PRA should present options to the PRAC at the next regularly scheduled PRAC meeting. Les asks again what the objective is. Scott wants the PRAC to have a review of the departure and the circumstances. How much of this is conduct and how much was structure? Les wonders how you think that would influence our decision. Scott states that he thinks it could influence any number of things – the manner in which the council seeks legislation, it's hard to say until the council have a complete understanding. Tony asks if that investigation and review include statements from former general counsel. Scott says that it would. Tony wants to hear what people say and find out what happened. Steve asks how can anyone be against fact finding? Most of us give Ginger the benefit of the doubt. She has taken copious notes and it's enough to disturb us. This is not a criminal investigation. I think there is enough credible evidence to take action. Scott states that this is due diligence. Les states that he will oppose the motion. He thinks the issues before the council are clear. Diverting attention to the investigation will distract the council. Mark agrees that he supports the idea of getting the facts, but he doesn't think that is our role. He does think it's a distraction. He has concerns about the investigation, how would it be paid for. Rob says ditto to what Mark said. Ginger states that it was her hope that the council would meet again in two weeks, does the motion mean to present research in two the weeks? Scott defers to Todd to see if he would have enough time. Todd states that he would not have options ready for October 1st. Steve says it's a distraction.

Votes – Scott – Yes, Tony – Yes, Shirin – Yes, Steve – No, Rich – No, Rob – No, Liz – No, Les – No, Mark – No, Michael – abstain, Ginger – abstain. Ginger says motion does not carry.

Steve states that he would move that the council adopt the resolution put forth by Tony. Mark asks if it would be appropriate to file that with the Secretary of State. Rich says because the statement has facts that the Secretary and Deputy aren't privy to, the Secretary will abstain. Michael is grateful to Ginger for her ambition, will not vote on the motion. Mark suggests that the council draft up something that members of the PRAC are all supportive of. There is some politics in there that he's not comfortable with. He would like to focus on her great work. Rob says ditto to what Mark said, let's kick it to the next meeting. The council need to do something to honor her service. Les agrees, and will withdraw his second. The council need to circulate a draft that will get us down to 250 words for consideration of the council. Rob says please don't circulate a draft. Please send comments directly to Ginger. Steve withdraws the motion.

The new motion should strongly endorse the service provided by Ginger McCall.

Vote – Rich – Yes, Steve – Yes, Scott – Yes, Shirin – Yes, Liz – Yes, Rob – Yes, Les – Yes, Mark – Yes, Tony – Yes, Ginger – Abstain.

Ginger states that she does not hold Emily Matasar responsible for anything that has transpired. Ginger does not want her to suffer repercussions because of this.

Vote to end the meeting. Carried.