

NO REDACTIONS

EXECUTIVE SESSION

JANUARY 4, 2012

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The Board met in Executive Session on Wednesday, January 4, 2012 at 7:05 p.m. with the following members present: Freeholder Everett Chamberlain, Freeholder Rick Gardner, Freeholder Jason Sarnoski, County Counsel Joseph J. Bell and County Administrator Steve Marvin.

Brief discussion was held on each of the following matters:

(1) *Matters Relating to Litigation, Negotiations and the Attorney-Client Privilege:* Any pending or anticipated litigation or contract negotiation in which the public body is, or many become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.

Mr. Chamberlain wished to begin Executive Session without Special Counsel Joe Houston in attendance in order that he might state for the record, his serious concerns with actions recently taken by Mr. Sarnoski. Mr. Chamberlain stated that he had direct knowledge that Mr. Sarnoski has had conversation regarding the PCFA controversy with Mr. Houston, Special Counsel Bruce Jones, PCFA Chairwoman Laurel Napolitani and PCFA Operations Director Jim Williams. Mr. Chamberlain stated that he believed that these conversations would compromise the investigation of the PCFA controversy and while he is not sure what Mr. Houston wants to accomplish in requesting this Executive Session, he noted that he will not be intimidated from taking the necessary actions to see that the PCFA matter is thoroughly and promptly brought to an equitable conclusion.

The PCFA has appointed Judge Wolfson (who did the investigation four or five years ago into the earlier PCFA matter) to accomplish a complete investigation of the issues. Mr. Bell stated that he believed that bringing Judge Wolfson in as an independent investigator would be beneficial and he advised that Judge Wolfson should be given latitude to proceed. Mr. Bell also noted that the County has recently received an OPRA Request from Express-Times Reporter Molnar for all letters from Special Counsel Jones for 2011 and he asked the Board whether they should be released to the press. After brief discussion, the Board agreed that they should be released. Mr. Chamberlain stated that Mr. Sarnoski's actions in releasing his letter of December 29, 2011 and his having the previously referenced conversations with involved individuals constitute conduct unbecoming a public official and that these actions have the potential to compromise the integrity of the investigation underway.

Mr. Gardner questioned why Mr. Sarnoski felt it necessary to copy his letter to the State Legislators when they have no role in the oversight or management of the PCFA or any other County business. Mr. Sarnoski stated that he believed that nothing in his letter was

inappropriate; that he was simply stating for the record his thoughts as to why an investigation should be conducted and that while it may have been improper to forward the letter to the legislators, he did not believe that this had any chance of impacting the matter. Mr. Gardner said that due to what he believed to be the rash actions of Mr. Sarnoski, that he would be withdrawing his support for Mr. Sarnoski's appointment as Deputy Director of the Board at the Reorganization Meeting.

Mr. Bell asked the Board whether they thought he should forward Bruce Jones' letter to the Prosecutor. The Board agreed that he should do so. At approximately 7:15 p.m., Special Counsel Joe Houston was asked to join Executive Session.

Mr. Houston stated that he has many years of service both as a Municipal Court Judge and as Special Counsel for the County and thus, has familiarity with criminal law and adjudications. He stated that in August, prior to the start of a PCFA Finance Committee Meeting, Mr. Williams disclosed to himself and Ms. Napolitani that he had executed a contract with Covanta at a reduced rate for placement of ash at the PCFA. Mr. Houston advised Mr. Williams to disclose this to the Authority Board which he did and he further advised Ms. Napolitani to engage Special Counsel Jones to look into this matter. Mr. Houston noted that as primary legal counsel for the PCFA, he has, when necessary, steered work concerning personnel matters to Special Counsel Jones and environmental and contractual matters to Special Counsel Florio, Perrucci, Steinhardt & Fader as he believed to be necessary. It was Mr. Houston's understanding that Ms. Napolitani and Mr. Jones met to discuss the contract controversy and concluded that they need to take control of the PCFA for a period of time (two days) prior to the next regular meeting of the Authority Board and at that regular Wednesday Authority Board Meeting, advised the full Authority as to the controversy. The PCFA Board issued a censure to Mr. Williams for his improper actions.

Mr. Houston went on to say that it was his understanding that he was appointed by, and works for, the Freeholder Board and is consequently assigned to the PCFA by them. He stated that Mr. Williams did a civil, not a criminal wrong and that if there had been any criminal activity, it would have been referred to the Prosecutor back in August. Mr. Houston stated that the PCFA's action to replace him with Mr. Tipton from Florio, Perrucci, Steinhardt and Fader was inappropriate and that he had been personally compromised by the PCFA's action. He wanted to note for the record that as Mr. Tipton was counsel to White Township and the PRMUA, both of whom have contractual relations with the PCFA, there is a possibility that Mr. Tipton would be conflicted in certain matters coming before the Authority. He further believed that his letter to the Board sent through Mr. Bell was submitted in confidence and he does not agree with Mr. Tipton's advice to the Authority to release the letters publicly at this time.

Mr. Bell said that he thought it would be appropriate for Mr. Tipton to do the day to day legal work for the PCFA during the pendency of the investigation by Judge Wolfson. Mr. Houston stated again his concern for releasing Attorney-Client Privileged documents to the press and to the public and his great concern with the potential conflict concerning

individuals being compelled to provide sworn testimony to Judge Wolfson while there is potential for the Prosecutor's Office to bring criminal charges. Obviously, these individuals might compromise their defense should any criminal charges be levied and thus, would be reluctant to assist in Judge Wolfson's investigation.

Mr. Marvin noted that in his opinion, since it was the Authority that has engaged Judge Wolfson, it was likely that Judge Wolfson would not have the capacity to issue subpoenas; to do depositions or to take sworn testimony as, to his knowledge, there is not investigative capacity granted to the Authority by statute. When Judge Wolfson did the investigation previously, it was done under cover of a Freeholder Board investigation; specifically, granted by law which provided for subpoena power and testimony under oath. Mr. Bell will research and advise whether in fact this is the case.

Mr. Chamberlain and Mr. Gardner both expressed concern with the County doing the investigation as it would be another unbudgeted expense to the 2012 Budget currently under discussion. Mr. Sarnoski stated that he believed that only the County could do a thorough investigation. Mr. Chamberlain believed that the Authority is perfectly capable of having this matter investigated by Judge Wolfson and he has every expectation that the investigation would be thorough and complete, especially given Judge Wolfson's previous high quality of service.

Mr. Houston stated that he has agreed that he will recuse himself from any matters involving the PCFA until the investigation is complete; that he strongly disagrees with Mr. Tipton's statement in the correspondence of December 29 that Mr. Houston had made allegations involving this matter and Mr. Houston went on to say again that he believed there had been no criminal activity and no wrongdoing by any of the Authority members.

To summarize the follow-up activities resulting from this meeting: Mr. Bell will forward copies of Mr. Jones' correspondence to the County Prosecutor; he will re-examine the issues involving release of Attorney-Client Privileged correspondence to the press in response to the OPRA Request and he will research and advise concerning the limits of the investigation to be conducted by Judge Wolfson.

On motion by Mr. Gardner, seconded by Mr. Sarnoski, the Board returned to open session at 7:50 p.m.

Recorded Vote: Mr. Sarnoski yes, Mr. Gardner yes, Mr. Chamberlain yes