

Regular Council Meeting
November 12, 2013 6:30 p.m.
City of Oswego, KS 67356

Present: Councilmembers Bill Owens, Dee Brown, Kelly Vance, Jane Rea, Darren Tynan and Susan Bringle with Mayor Glenn Fischer presiding.

Also present: City Superintendent Calvin Jurgensen, City Clerk Cheri Peine, Deputy City Clerk Carol Eddington, Asst. Chief of Police Brandon Conrad, Police Officer Joe Royer, City Attorney Rick Tucker, Eldon and Etsuko Perkins, Rose Cross, LulaMae Villegas, Marvin Wahl, Roger Vance, Rena Russell, Larry Frogley, Skip Riley, Steve Christy, Danny Chapman, Pat Hendrickson, Carole McKinley, Rocco Mallardi, Tom Bringle, Jeff and Sheri Goodnight, Steve Denton, Kenny Bitner, Brenda Richardson, Jordan Irwin, Marna George, Gordon and Paula Kern, Gary Tomey, Larry Richardson and Jan Owens.

OPENING PRAYER AND PLEDGE OF ALLEGIANCE

Rev. Rocco Mallardi, Lutheran Church, gave the opening prayer and Councilmember Vance lead the Pledge of Allegiance.

PUBLIC HEARING – 705 4th St. Condemnation

The Mayor opened the public hearing on condemnation proceedings on 705 4th St. The city has included this building in a CDBG grant application for demolition. The grant would pay for up to half of the cost for demolition of the building and wall panels for the adjoining building walls after the building has been removed. The grant will not be awarded until after the first of the year. Mayor Fischer left the Public Hearing open and moved on with the agenda.

PETITIONS AND DELEGATIONS

Dick Seybolt – Economic Development

Mr. Seybolt contacted the city and said he was unable to attend the meeting this evening.

Steve Christy - 1211 First St.

The city was in the process of condemnation proceedings on this property when Mr. Christy advised that he was the actual owner of the property, even though he had never filed the deed. When Clerk Peine checked with the League of Kansas Municipalities attorney, they advised the city that since there is a new owner, the city would have to begin the condemnation process all over again.

Mr. Christy addressed the Council and asked them for time to make necessary repairs to the property. He said that he had misplaced the deed to the property but would contact Dantic (the owner of record) to try to obtain another deed. Christy said he plans to fix up the house to rent out. Staff said that he would have to bring the house up to meet Minimum Standard Housing codes and Christy said he understood. He said that he had already called the city and left a message for the City Superintendent to contact him so they can discuss what all needs to be done to the property. Clerk Peine said she would send him a copy of the Minimum Housing Code and the inspection checklist.

When asked about a time frame to have the work done, Christy said that he could begin working on the house as soon as possible and would hopefully have the work done in 90 days, however,

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winter is coming on so that may impede progress. Owens made a motion and Tynan seconded to allow Christy six months to make repairs to the property to meet Minimum Standard Housing Code. Motion carried.

Roger Vance, Oswego Community Hospital – Occupational Health Program

Mr. Vance has presented the City with an agreement between the City and the hospital for Occupational Health Services. Vance said theirs is a pro-active approach to health care and wellness including health fairs, educational opportunities, work comp case follow up, etc. He said that the services they are proposing would be better than health screenings only – that they would provide a physician or practitioner to help employees work on and achieve better health practices. Also, during pre-employment screenings they would provide comprehensive screenings including range of motion, etc. He said that the rates the hospital would charge the city are anywhere from 40% - 60% off the rate that the city now pays.

Mayor Fischer stated that he understood in the meeting held with hospital representatives that this agreement does not obligate the city to use only the hospital for these services. Vance confirmed that that was true.

The fee schedule for these services was handed out at the Council meeting. Council asked staff to compare the prices to what the city currently pays for these services. The issue was tabled until next month.

ORDINANCES

Mowing Assessment Ordinance

“AN ORDINANCE MAKING AND LEVYING A SPECIAL TAX UPON ALL LOTS AND PARCELS OF GROUND IN THE CITY OF OSWEGO, KANSAS FOR THE COST AND EXPENSE OF MOWING IN SAID CITY THROUGH SEPTEMBER 20, 2013” was presented. Brown made a motion and Owens seconded to approve the ordinance. Motion carried. Clerk assigned it Ordinance No. 1313.

Annex Jennings Property

This ordinance annexes the property recently purchased by the city for a housing development. “AN ORDINANCE ANNEXING LAND TO THE CITY OF OSWEGO, KANSAS, THE UNPLATTED LAND DESCRIBED HEREIN, WHICH LAND IS OWNED BY THE CITY OF OSWEGO” was presented. Brown made a motion and Rea seconded to approve the ordinance as presented. Motion carried with Mayor Fischer breaking the tie vote of Rea – yes, Bringle – yes, Brown – yes, Vance – no, Tynan – no, Owens – no. Clerk assigned Ordinance No. 1314.

Public Hearing – 705 4th St.

There being no one in attendance to discuss the condemnation of 705 4th St., Mayor Fischer closed the public hearing at 6:57 p.m. A Resolution setting the amount of time for the building to be torn down was presented. The Resolution sets January 4th as the last day for the owner to remove the building. Rea made a motion and Bringle seconded to approve Resolution 11-12-13A as presented. Motion carried.

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CONSENT AGENDA

The Consent Agenda includes minutes from regular and any special meetings since the last regular meeting, accounts payables check registers for the month (copies of the warrants were available for review), payroll checks for the month and utility deposit refund checks for the month.

The Consent Agenda also included reappointments of Jane Rea and Gina Davis to the Housing Committee for three year terms.

Councilmember Owens asked that a change be made to the section on page 3 of the Oct. 16th meeting minutes where it referred to him stating he had not received the airport fuel contract either should state that "Owens commented he did not have it at that time either". Rea made a motion and Brown seconded to approve the Consent Agenda with Owen's change to the Oct 16th minutes. Motion carried.

OLD BUSINESS

Water Project – Streambank/ Dam Project

FEMA has notified Joe Wheeler, KS Dept. of Emergency Management, that they are not approving the city's request for an extension on the project. They said that the city added things to the project that held it up and that is why they are denying the extension. The city does not agree with this finding and plan to appeal the decision.

Unfortunately, the appeal process could be lengthy and due to the problems with the intake, the city cannot wait before taking corrective action. The problems with the intake have become critical in the past week. The city is not able to get enough water into the water plant from the silo in order to treat it at the required ratio. This is due to the amount of mud and sticks that have been sucked up into the system. Supt. Jurgensen has made calls to obtain a large vacuum to clear the mud out of the silo around the pump, which will help for a short time. Jurgensen said that the water project will provide a gate that can shut off the water in order to get to the mud manually as has been done in the past.

The city has contacted the offices of our Federal legislators and we are in the process of providing them information on the project in seeking their assistance on the appeal. In the meantime, staff has contacted Rural Development to see whether they could award the city more grant funds to help make up for lost grant funds from FEMA (\$347,000) and for additional project costs (\$211,000). Christie McReynolds has advised the maximum grant the city can receive on the FEMA portion is 45% (\$156,000). Additional funding would be in the form of a loan. Assuming Rural Development would provide the full 45% of grant funds, the total loan amount for this project would add up to \$825,000. Clerk Peine said the city would have to hold a special meeting after receiving the response from Rural Development.

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Bids for the work were received on October 3rd and are good for 60 days. Rural Development is trying to get funding in place for the city in order to award the contract before the 60 days expires.

Housing – CDBG Housing Project – Land Acquisition

Rea made a motion and Brown seconded to go into executive session to discuss land acquisition for 10 minutes with the Mayor, Council, City Clerk and City Attorney in attendance. Motion carried. Executive session began at 7:13 p.m. and ended at 7:24 p.m.

Rea made a motion and Brown seconded to go into executive session to discuss land acquisition for 10 minutes with the Mayor, Council, City Clerk and City Attorney in attendance. Motion carried. Executive session began at 7:24 p.m. and ended at 7:31 p.m. Mayor called the meeting back in session at 7:34 p.m.

Rea made a motion and Tynan seconded to submit offers on the two properties as discussed (112 Iowa and 1114 Brad) for the CDBG Housing Rehabilitation Project. Motion carried with Brown voting no.

Airport

Rea made a motion and Tynan seconded to go into executive session for 10 minutes to discuss the acquisition of land with the City Attorney, Council, Mayor and City Clerk in attendance. Motion carried. Executive session began at 7:36 p.m. and ended at 7:46 p.m.

Brown made a motion and Bringle seconded to approve the mayor's signature on the revised offer. Motion carried with Mayor Fischer breaking the tie vote of Rea – yes, Bringle – yes, Brown – yes, Tynan – no, Owens – no, Vance – no.

Housing – CDBG Housing Project – Property Rehabilitation

The bid tabulation sheet was included in the Council packet. All four contractors are frequent bidders for SEK Regional Planning Commission administered housing programs. Staff recommended accepting the low bids from Ewing Construction for 303 Ohio and 1317 6th St. and the low bids from S & A Construction for 323 4th St. and 1124 5th St. Since the bid for 1124 5th St. is over the \$20,000 maximum grant award there are two options: 1) Susan Galemore, Administrator is checking to see if HOME funds can be used to make up the difference of \$2,929 and if not, the home owner will be given 30 days to provide the additional funding on their own. If neither of these options work, the funding will move to the next person on the list.

Owens made a motion and Rea seconded to approve the bids for 303 Ohio, 1317 W. 6th, 323 Fourth, and 1124 Fifth St. (with other funding above the \$20,000). Motion carried.

Cottonwood, Neosho Water Assurance District

Water Assurance districts provide municipal and industrial water during times of drought. The city is a member of the Cottonwood & Neosho River Basins Water Assurance District #3.

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During the past couple of years' severe drought, the District received releases from John Redmond. Redmond needs to be dredged out and current discussions include passing the cost on to members of the Assurance District. The cost is expected to double the city's annual payment to the District. Westar, also a member of the District, would also see a cost in their annual payment which could result in an increase in electrical rates as well. There is a potential for these costs to be ongoing if the need for dredging continues. Citizens need to be aware that this could raise their water rates.

Clerk Peine said that some funding had been in the State budget to go to the State Water Fund which could have been used to pay the costs of the proposed dredging at John Redmond, but with the recent funding issues at the state level, those funds were swept from the reserves to address other needs. The city will contact our Representative and Senator to voice our concerns over this proposed change.

Fiber Optic

Mayor Fischer advised that Craw-Kan has resubmitted their previous offer – one connection for the city, with a 6 meg connection, and has advised they will pay 50% of a security system for the airport. The committee understood that Craw-Kan would be willing to install a connection to all city buildings, provide a quote for IT services, and provide a 50 meg connection for City Hall. The Committee reported that each time they met with Craw-Kan, their proposal to the city never matched what they said they would do during the meeting with them.

The Mayor, Superintendent and City Clerk met with Cable One. Cable One is not interested in providing internet service to residents, only to businesses and schools. Their rates were very high. After further discussion, the Mayor said that the city probably couldn't make any decisions until the school does. It was suggested to speak to the School Superintendent and explain the city situation. Either the Mayor or City Clerk will meet with LaTurner.

NEW BUSINESS

Personnel Policy

The special meeting to discuss the revised personnel policy was set for November 25th at 6:00 p.m.

Budget Amendment Public Hearing Date

Peine submitted a proposed budget amendment that includes amendments to the Refuse and General funds. The Refuse fund amendment is due to the \$80,000 transferred from Refuse, Surplus for the City Hall Renovation project. The General fund amendment is for \$43,500. The fund is going to be very close and this may not be needed but if there is a large, unexpected expense before the end of the year, it could put us over budget. This is a precaution only. Council determined to hold the public hearing for the budget amendments at the regular December meeting at 6:30 p.m.

City Projects Special Meeting

A special meeting to discuss the various city projects will be held on December 3rd at 6:00 p.m.

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Records Management Program

A list of items that may be destroyed under the city's record management program was included in the Council packets. Rea made a motion and Owens seconded to destroy all of the items on the list to be destroyed except for the Tree City USA applications. Motion carried.

Strategic Plan

The Strategic Plan session is set for February 1, 2014.

Zoning Regulations Revision

Clerk Peine stated that the review process has taken longer than anticipated, however, this has been an excellent review of the regulations. Brown made a motion and Bringle seconded to approve the Revision 1 to the original contract with Yearout that allows for two additional meetings at a cost of \$1,800. Motion carried with Tynan voting no.

Health Ins. For Retirees

At the time the city signed on with Midwest Public Risk for health insurance coverage, the policy was not marked to include coverage for retiring employees. The city's personnel Policy, in compliance with KSA 12-5040, states that the city must provide health insurance to employees who retire before the age of 65, if the employee retires with not less than 10 years of coverage and retires after December 31, 1988. MPR advised the appropriate manner in which to change to the policy is through Council approval and a letter to that effect submitted to them. Owens made a motion and Brown seconded to approve a change to the Health Services Agreement in order to allow coverage for retirees as required by law. Motion carried.

City Clerk Appointment

Attorney Tucker was contacted and asked for his opinion on the vote of appointment of the City Clerk at the special meeting on October 21, 2013 where Councilmember Bringle declared a conflict and then voted yes to approve the appointment of her husband Tom Bringle. Attorney Tucker researched the issue and rendered his opinion in a letter to the Governing Body. Tucker read his letter of opinion aloud during the meeting. The letter of opinion is attached to these minutes as an official part of the minutes.

In conclusion, Attorney Tucker's opinion was that Councilmember Bringle may vote yes on the appointment and that no conflict of interest occurred. Tucker also stated that the Mayor may break the tie vote.

Mayor Fischer read aloud a letter that he received just before this meeting began, from Tom Bringle, stating that he withdraws his name for consideration of City Clerk.

Brown made a motion and Rea seconded to go into executive session to discuss non-elected personnel for 15 minutes with the Mayor, City Attorney and Council present. Motion carried. Executive session began at 8:44 p.m. and ended at 8:59 p.m.

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Mayor Fischer appointed Carol Eddington to the position of City Clerk after Clerk Peine retires. Owens made a motion and Tynan seconded to approve the appointment. Motion carried unanimously.

INDIVIDUAL REPORTS

Owens – asked about the water loss report and whether the contractors with boring rigs water use was being metered. Supt. Jurgensen stated that the contractors pay at the bulk rate. They have a 2,000 gallon tank and are charged per tank. The contractor is going to let him know how many tank loads they get. Most of the time, water obtained by contractors is through the fire hydrant and metered but the city's meter for that purpose is not working properly at this time.

- asked about the exact expense for the land for the housing development project. Staff will let him know.

Rea – asked if the tennis courts had been fixed yet? Supt. Jurgensen stated that the company came a couple of weeks ago and fixed the concerns that the city had voiced. He said he was satisfied with the corrective work that was done.

- stated that the Tree Board has some vacancies that need to be filled.

Vance – asked about the tax levy on the cemetery? Clerk Peine reported that the cemetery is separate from the city and is its own taxing unit. She stated that she understood there had been some type of error but was unaware of the details. She said the County Clerk could explain this.

Tynan – asked if there were any more roads that were going to be paved. Supt. Jurgensen said not until next fall. The city needs to do some crack sealing on the streets before the resurfacing can be done using the micro-surfacing process that will be less expensive and not have the high build-up of asphalt.

Peine – there are two additional accounts payable bills that Peine would like to see approved this evening. Tennis courts - \$7,000 (now that the tennis courts are finished), Conoco - \$959.18 (which we did not receive until today but is for October). Owens made a motion and Vance seconded to approve both payments. Motion carried.

15 Minute Public Discussion

Mayor Fischer stated that he was going to open up the last 15 minutes of the meeting to give the audience an opportunity to speak to the Governing Body. He said that there would be no personal attacks allowed; that people address only items that are for the good of the city; asked that only those given the floor be the ones to speak; and that people suggest solutions to things they see as problems.

Marna George – asked when the city was going to put the wooden sign back up in the park. She was informed that the sign she is referring to was never taken down.

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Eldon Perkins – began making personal attacks against the Mayor and had no pertinent question or constructive comments. Therefore, Mr. Perkins was not allowed to continue as per the instructions of the 15 minute session.

Gary Tomey – asked why it was so hard to get put on the agenda for Council meetings? The Mayor said it was not hard, that individuals just need to fill out the required paperwork completely. Clerk Peine explained that the city asks people to fill out the form because there may be things that can be handled without taking up time at the Council meeting, which can be lengthy at times. She also said that it helps the Council be prepared for discussion on your issue or concern.

Tomey said he felt like he couldn't trust city hall and yet did not have any reasons as to why he said that when asked about it. He said he just wants to be heard. Mayor Fischer suggested Tomey come in for a meeting with him so he can listen to his concerns and also so he and the City Clerk could work with him to try to make the form simpler, however, Tomey said that now he doesn't have any problems to discuss and doesn't have time to do that.

Councilmember Tynan – stated that he was glad to see so many citizens attending the Council meetings now.

Jan Owens – expressed her concern that the audience does not always know what the Council is talking about and wondered if they could introduce their topics before the discussion begins. She said she would also encourage the city to communicate more with the citizens on things that are going on with the city. Mayor Fischer felt the city could communicate better as well and will work towards that.

Paula Kern – asked how the property for the housing development is going to be paid for? Mayor Fischer told her that initially with a GO Bond but eventually through purchases of the property. She then asked if no one has purchased the land in 6 years, how will the bonds be paid? Mayor Fischer said that there is interest in the land now so he does not foresee that happening.

Kern then asked about the sewer assessment on her property? Clerk Peine explained that it was put on when sewer service was installed in that addition. A grant paid for part of the project and the balance was assessed to the properties. Land owners had the opportunity to pay for the cost up front or have it placed on their taxes.

Mayor Fischer thanked everyone for attending the meeting.

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ADJOURNMENT

Owens made a motion and Rea seconded to adjourn the meeting at 9:30 p.m. Motion carried.

Mayor Glenn Fischer

Attest:

Deputy City Clerk Carol Eddington

TUCKER AND MARKHAM

Richard G. Tucker
David K. Markham

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October 31, 2013

Mayor Glenn Fischer
and Governing Body
City of Oswego
P.O. Box 210
Oswego, KS 67356

Re: Appointment of City Clerk

Ladies and Gentlemen:

I was asked to render an opinion regarding the law affecting the current status of the appointment of Tom Bringle to fill the vacancy in the office of the City Clerk after the retirement of Cheri.

My understanding of the facts are as follows:

- A. Mayor Fischer appointed Tom Bringle.
- B. When the Council voted to confirm the appointment the vote was three (3) against to two (2) in favor with Susan Bringle not voting.
- C. After further discussion, Susan Bringle declared that she had a conflict but that that did not preclude her from voting and she voted yes. That brought the vote to three (3) against and three (3) in favor.
- D. The question was asked as to whether or not Susan Bringle's actions were legal in proceeding to vote "yes" and it was agreed that I would be called. I was contacted and advised that I would need to study the issue and would render an opinion as soon as possible. The Mayor ordered the votes to be recorded and reported that I would be instructed to attend the meeting when discussion and voting on this issue were resumed.

I have been asked to render an opinion concerning the application of various laws and City policies to the above factual scenario.

In the Oswego City Code Book - Section 1-205, the powers of the Mayor include:

"The Mayor shall have the tie-breaking vote on all questions when the members present are equally divided."

K.S.A. 14-201 provides that in a City of the Second Class, in a city operating under the Mayor/Council form of government the Mayor shall appoint by and with the consent of the council a City Clerk (among other appointive officers).

In 2008, the Legislature passed K.S.A. 12-16,128, dealing with Mayoral appointments and the confirmation thereof by the council and provided as follows:

"From and after July 1, 2008, any appointment to any board, commission, advisory group or other body made by the mayor of any city which is subject to approval of the governing body of the city must be acted upon by the governing body within 45 days of the appointment by the mayor or the appointment shall be deemed approved. The governing body of the city shall approve such appointment unless the governing body makes a specific finding by the passage of a resolution that the person is either unqualified to hold the office or is not fit to hold the office or position."

Those statutory provisions concerning the appointment and confirmation of a City Clerk are codified in the Oswego City Code, Section 1-301.

The Governing Body Handbook which is prepared by the League of Kansas Municipalities has the following provision in Section 3(D) on Page 39:

"(3) Confirmation of Appointments. In most cities, the mayor submits nominees for appointments and to fill vacancies. Once the mayor has made the appointment, the governing body has 45 days in which to act on the appointment. Individuals must be approved unless there are specific findings by the governing body, which must

be made through the passage of a resolution, that the person is "unqualified to hold the office or is not fit to hold the office or position." If after 45 days the governing body has failed to act, the appointment is automatically deemed approved. (K.S.A. 12-16,128)"

It is generally accepted law that the Mayor may cast the deciding vote in the case of a tie on the confirmation. Carroll v. Wall, 35 Kan. 36 (1886)

As a matter of note, on resolutions and motions involving non-ordinance matters a simple majority vote is required in order to pass. Abstentions are counted on the prevailing side.

An additional issue to consider would be whether or not Susan Bringle, the spouse of Tom Bringle, the mayoral appointee for City Clerk would have a conflict of interest in voting to confirm his appointment or whether such an action would be in violation of state law the City's Code of Ethics (Oswego City Code, Section 1-212).

The Kansas Conflict of Interest Act, K.S.A. 75-4301(a), et seq., has a two fold purpose:

- (1) To require disclosure of substantial business interests of local government officials; and
- (2) To prohibit any public officer or employee from participating in the making of any contract on behalf of the local government or business in which the official or employee has a substantial interest, i.e., self dealing.

The act applies to local units of government, its elective officials and appointees.

A substantial interest is defined in K.S.A. 75-4301(a) and appears to deal primarily with contractual matters involving money in excess of \$5,000 or 5% of any business. In other words, a city councilman should abstain from voting on any matter of contract with the company in which the councilman or councilman's spouse has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5% of the business. The substantial interest definition seems limited to "doing business" - not the appointment of city officers.

Substantial interests can only be held in a "business" defined as "any corporation, association, partnership, proprietorship, trust, joint venture and every other business interest, including ownership or use of land for income." (K.S.A. 75-4301(a)(b))

"Attorney General Opinion 49 (1984) said that absent a statute such as K.S.A. 13-2903 (repealed in 1998) which disqualifies relatives of the Mayor or any commissioner in City's of the First Class operating under the commission form of government from holding a city office or similar local ordinance, a city councilman may take action on remuneration or other matters affecting a city office held by his or her spouse. The opinion said that in such action in no way involved a contract covered by K.S.A. 75-4304 nor did it violate the common law rule of conflict of interest."

The common law rule on conflict of interest was stated by the Kansas Supreme Court in Anderson vs. City of Parsons, 209 Kan. 337 (1972) in which the court stated:

"We, of course, recognize the common law principle that a public officer owes an undivided duty to the public whom he serves and is not permitted to place himself in a position that will subject him to conflicting duties or cause him to act other than for the best interest of the public. If he acquires any interest adverse to those of the public, without a full disclosure it is a betrayal of his trust and a breach of confidence (United States v. Carter, 217 U.S. 286, 54 L.Ed 769, 30 S. Ct. 515 (1910))."

The law however does not forbid the holding of an office or at exercising powers thereunder because of the possibility of a future conflict of interest.

Local regulations may govern conflict of interest and the issue of conflict of interest is dealt with in the Oswego City Code - Section 1-212, which contains its code of ethics. Under subsection (e), the code provides:

"Conflict of Interest - No elected or appointive city official or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his or her duties in the public interest or would tend to impair

his or her independence of judgment or action in the performance of his or her official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business or political association."

Specific examples of conflicts of interest are enumerated thereafter in the policy, none of which would seem to apply to the facts at hand.


Often times nepotism can be seen as a form of conflict of interest. The City apparently has no policy concerning nepotism. In some related Attorney General's opinions, the Kansas Attorney General has said that related persons otherwise qualified may concurrently serve as members of the governing body of the city of third class having a mayor council form of government. A person related to a governing body member may also serve as city clerk. Attorney General Opinion 88 (1981), Attorney General Opinion 49 (1984). The Attorney General also said in Attorney General Opinion 89 (1986) that a marital relationship between a school board member and attorney for the district did not create a conflict of interest but that the school board member had to abstain when dealing with matters involving the attorney's spouse or the firm which employed the spouse.

CONCLUSION

It is my opinion based upon the careful review of all of the above authorities, consideration of the matter and consultation with Larry Bauer, Chief Counsel at the Kansas League of Municipalities, that councilman Susan Bringle may vote yes on the confirmation of her husband as City Clerk. It is my further opinion that no conflict of interest is created within the language of Kansas statutes or the City's Code. It is my further opinion that in this circumstance Mayor Fischer may vote to break the tie.

If all of this is done, this being a Mayoral appointment, the matter will stand until a successor is appointed and qualified.

Respectfully submitted,



Richard G. Tucker
City Attorney

RGT/jo