

VERMILION CIVIL SERVICE COMMISSION MEETING

Minutes of June 9, 2020

8:30 AM ♦ City Hall – 5511 Liberty Avenue, Vermilion, Ohio

ROLL CALL: Kenneth Lieux; Charles Adams; Norman Hendrickson

GUESTS: Elizabeth Wakefield

K. Lieux called the Tuesday, June 9, 2020 meeting to order.

Approval of Minutes:

N. Hendrickson MOVED; C. Adams seconded to approve the meeting minutes of May 22, 2020. Vote 3 YEAS.
MOTION CARRIED.

Old Business:

K. Lieux said they are meeting to continue discussion relative to the decision of the Erie County Court of Common Pleas – Judge Tone's decision relating to the Sergeant's promotional test. He said it's worth noting that at the Commission's meeting on May 22, 2020 they had a unanimous determination of the Commission that the decision of Judge Tone would be appealed to the Sixth District Court of Appeals as afforded under the law and this determination was forwarded to Mayor Forthofer. He noted for the record that he received email correspondence from the Mayor dated June 3, 2020 and he marked this as Exhibit 1 (June 9, 2020 Civil Service Commission Meeting).

N. Hendrickson MOVED; C. Adams seconded to include the Mayor's letter dated June 3, 2020 into the official record of the Civil Service Commission as attached hereto and marked Exhibit 1. Vote 3 YEAS. MOTION CARRIED.

K. Lieux noted for the record that he circulated the Mayor's letter dated June 3, 2020 to the Civil Service Commission members for review and response.

K. Lieux offered a few thoughts he had relative to the Mayor's position. He thinks the summary of the Mayor's position is that he has determined that there should not or will not be an appeal of Judge Tone's decision, so he has essentially overridden the Commission's determination that the decision should be appealed, and the Mayor has set forth various rationale in support of his decision in this regard. He commented on a few things in the Mayor's letter and one reason the Mayor's cites is that the appeal could take a year and during this time the Vermilion Police Department will have two vacancies in the sergeant's ranks. It's anticipated that there could be some retirements coming up that they're aware of. The Mayor's states that those positions will remain unfilled during the time of an appeal and patrolmen will be supervised by patrolmen creating unnecessary exposure for the City. He said in his view and he believes it's the view of the other commissioner's - that this is incorrect. They have provided a list to the Mayor when they gave the Sergeant's promotional test and there were five patrolmen who passed. The commission ranked them according to their scoring and the first name on that list was provided to the Mayor pursuant to the Charter and the Civil Service Rules, and it's his understanding that this officer had been hired as a Sergeant. There are four names remaining on the list in order of ranking and should a position for Sergeant become vacant, they would simply forward the next name on the list to the Mayor. So, his statement that the position will remain unfilled is not correct. There is a valid list in place and there are four names remaining on the list and there's no reason that any open positions should be unfilled, so he takes issue of this statement of the Mayor.

Secondly, the Mayor makes comments in his letter about a 50/50 chance of winning an appeal, while he characterizes an appeal as a gamble. He would take issue of this characterization as this is not a horse race. They are proceeding under the law as they determine it to be and they have guidance from the law. Their determination to appeal Judge Tone's decision is based on their conclusion that Judge Tone's decision is in error and unlawful, and it should be appealed to the next recognized legal avenue, which is the Sixth District Court of Appeals. The characterization of it being a gamble or a 50/50 chance is irrelevant. They think under the law this is what is necessary to occur.

He said as far as a cost of an appeal, they can take issue with the estimated cost of an appeal. However, this is not the point. The point is irrelevant – any costs under the Charter and the Civil Service Rules attenuated to any action that the Civil Service Commission takes is to be paid by City Council, which is set forth in the Charter. So, the cost expense to an appeal is irrelevant to the determination in their view.

Another thing he would like to correct for the record or state is with regards to the last paragraph on page one of the Mayor's letter as it states: The suggestion that VPD is moving part time officers to full time without taking a Civil Service test does not fit with my experience. K. Lieux said this is an incorrect statement as this has not been the position of the Civil Service Commission, nor is this their position today. Nobody is saying that part time officers are moved to full time, and part time officers have to take the Civil Service test; they have to pass it and get on the list before they're hired as full time officers. Their determination has been that part time officers who did not take and pass the Civil Service test are under the actions of the Chief, as well as the determination of Judge Tone and the Mayor that they're given credit towards their eligibility to sit for a Sergeant's promotional test, and for the various reasons they set forth at the last meeting and the Exhibits attached to the record. That is the point, so he thinks the Mayor is incorrect; that this is not what their position of Civil Service is, nor is it the experience. Their whole purpose of this is to follow the rules of the Civil Service Commission and make sure that qualified full-time police officers are given the eligibility to sit for a promotional test. He just wanted to correct this in the record of this not being a correct statement of the position of the Civil Service Commission.

K. Lieux asked if there were other comments from the members relative to the mayor's letter of June 3, 2020. C. Adams said no, as it was well stated. N. Hendrickson agreed and thinks that the Mayor misunderstood some of what they told him. He's not sure if the Mayor didn't understand or if he didn't listen to them, but he thinks according to Judge Tone's ruling they could see any member of the Vermilion Police Department; a police officer with three years on the department could take a promotional exam. K. Lieux added as part time. N. Hendrickson said it doesn't exclude part time officers and this was their concern. According to Judge Tone's order, the promotional exam would not exclude part time officers according to his order. K. Lieux said he agrees and thinks that if Judge Tone's decision is left to stand it sets a bad situation for the department moving forward relative to any promotional test whether it's promotion to Sergeant, promotion to Captain, or Chief. It just creates a bad situation that really circumvents the Civil Service rules, so this is a real danger. N. Hendrickson said he also believes that leaving the order in place without an appeal leaves an order that the Commission has serious problems which opens it to the public for possible use in further cases by other departments. There is a Common Pleas Court judgment that could be used as case law. K. Lieux said this is correct as they set a bad precedent for other departments moving forward. He said he doesn't want to lose sight of one thing – there is currently four members of the police department who have fulfilled the requirements for promotion who have passed the test; who have been ranked and who are on the list, and Judge Tone's decision may affect them in an adverse way moving forward, and they can't lose sight of their rights as current members of the department who are on the list ready for promotion when these vacancies occur, which may occur soon to his understanding. So, they need to be cognizant of those other officer's rights – they; having complied with the Civil Service rules and the Commission's determination.

K. Lieux conveyed that what the Mayor has left the Commission with is the decision to comply with Judge Tone's decision and schedule the Phase 2 of the Sergeant's promotional test for the two candidates who are at issue here; Officer Chandler and Officer Davis, II, so this is where this leaves them. This being said and taking everything

as a whole and speaking for himself as member of the Commission for a number of years, and the current Chairman of the Commission, he is not comfortable with carrying out the dictates of Judge Tone's letter. He thinks it is a wrong decision and contrary to law; it is contrary to the Civil Service rules and he does not want to be a party to it. In light of the decision of the Mayor set forth in his letter of June 3, 2020 and to further note - in the Mayor's letter (paragraph one) it states that in considering the Civil Service Commission's decision; he called it their recommendation, but he thinks it's their decision, right and duty to fulfill, carry out, and implement the Civil Service rules that Judge Tone's decision should be appealed. He said the Mayor writes - I have sought the opinion of the City's Law Director and several attorney's outside of Vermilion City Government. He said this statement is very troubling to him - the Mayor's decision makes it very clear that he is not following their decision-making in this matter; that he is seeking outside opinions to override their decision-making as a duly appointed and approved member of the Civil Service Commission that has a sworn duty to uphold the Civil Service rules. It is apparent to him that the Mayor is not putting any faith, stock, trust, or reliance in their decision-making and he doesn't think he can continue in his role. Without the support of the Mayor, he doesn't know why they have a Civil Service Commission, quite frankly. Given that and with great reluctance, K. Lieux conveyed that he is tendering his resignation to the Civil Service Commission. He indicated that he would continue until such time as the Mayor finds a substitute for his position. He understands there is a Dispatcher exam coming up and he doesn't want to leave the City in a lurch without that being taken care of. He will certainly continue in his role as a Civil Service Commission member and he will proctor the exam for the Dispatcher test they are administering on June 25, 2020 and he will follow through with the grading and list required in this regard. He will be available to serve the Civil Service Commission in this regard until his replacement can be approved by City Council. However, he will not be participating in any action to carry out Judge Tone's decision as he feels it is contrary to law and the Civil Service rules.

N. Hendrickson said he agrees with K. Lieux's decision and has done a lot of soul searching himself when this order first came down. He said that he believed that Judge Tone was ordering them to violate state law and he would have no part of that, and he agrees with what Chairman Lieux is doing and he joins him in tendering his resignation as well, and he will also not leave the City in a lurch regarding the full time Dispatcher's test, but he will absent himself from any decision to take action on Judge Tone's order.

C. Adams said he is still committed to his resignation as he is supportive of everything K. Lieux and N. Hendrickson has said. It's the reason why he resigned his position and he doesn't feel comfortable, and he thinks the Mayor is asking them to do something inappropriate, and the background of this is hard for him to endure, so he is still committed to resigning from the Commission; much as he hates to because this has been very interesting to him, but it's not possible now. K. Lieux said it's been a pleasure to serve the city in this capacity and he has enjoyed it, and he's glad to contribute any way he can to the great City of Vermilion, as he feels they all agree it's a wonderful community and in speaking for all Commission members it's always been their hope to have the best police department they can have; to avoid nepotism and to avoid politics, and he thinks they have aggrsed in the knowledge they have striven to uphold the rules. He thanked the Commission members for their service.

N. Hendrickson MOVED; C. Adams seconded to adjourn the meeting upon no further discussion. Vote 3 YEAS.
MOTION CARRIED.

Transcribed by Gwen Fisher, Certified Municipal Clerk

June 9, 2020; Exhibit 1

From: Kenneth Lieux lieuxjd@aol.com
Subject: Fwd: Judge Tone's Decision and Appeal
Date: Jun 3, 2020 at 6:22:03 PM
To: Norm Hendrickson dutchhen@roadrunner.com, Charlie Adams
loraincfa@roadrunner.com, Gwen Fisher GwenFisher@vermilion.net

Sent from my iPhone

Begin forwarded message:

From: Jim Forthofer <JimForthofer@vermilion.net>
Date: June 3, 2020 at 4:45:03 PM EDT
To: Kenneth Lieux <lieuxjd@aol.com>
Subject: Judge Tone's Decision and Appeal

Dear Ken:

I have considered the Civil Service Commission's recommendation that Judge Tone's decision be appealed. I have sought the opinion of the City's Law Director and several attorneys outside of Vermilion City Government.

My decision is to not pursue an appeal. The facts that influenced my conclusion are these:

- The consensus of those reviewing the decision is that the City would have less than a 50/50 chance of winning an appeal.
- An appeal could take a year. During this time the VPD will have two vacancies in the sergeant's ranks. Those positions will remain unfilled. Shift patrolmen will be supervised by patrolmen creating unnecessary exposure for the City.
- The cost of an appeal could be \$30,000. Our shrinking budget cannot tolerate a hit like this for a gamble.
- The Civil Service rule pertaining to eligibility at the center of the disruption of the testing process can be clarified by the Civil Service Commission without an appeal of Judge Tone's ruling.

The suggestion that VPD is moving part time officers to full time without taking a Civil Service test does not fit with my experience. Since I have been Mayor, three officers have been hired full time. I participated in the interview of all three along with the Chief. All three were on the Civil Service Patrolman Exam list. Additionally, there has been only one promotion during my term. Before the legal action by Officers Davis and Chandler, I supported Officer Reising's promotion to Sergeant after he scored first on the current Sergeant's exam. To my understanding, VPD hiring and promotions are being followed properly.

My recommendation to the Civil Service Commission is that Officers Davis and Chandler be allowed to take the oral portion of the Sergeants' Exam and enter the rankings according to their results. I also recommend the Commission address the definition of eligibility that was challenged by the officers and referred to by Judge Tone in his decision.

I do not wish to contradict the Commission's consensus regarding Judge Tone's decision but I urge that we move on from this experience.

Sincerely,

Jim Forthofer

Mayor, City of Vermilion

5511 Liberty Avenue

Vermilion, Ohio

440/204-2400

