

RECORD OF PROCEEDINGS

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Minutes of VILLAGE OF GENOA COUNCIL

Meeting

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National Graphics Corp., Cols., O. Form No. 1097

Held AUGUST 15, 1988

7:30 pm 19

Mayor John Harbal called the meeting to order with the pledge to the flag. Clerk/Treasurer Barbara Smith called the roll: Bower, Verkin, Motter, Donley and Skilliter all present. (5) Miller absent.

Hearing of charges filed by the Mayor against Cheryl Bartow. pursuant to the Ohio Revised Code Section 733.36. Mayor Harbal asked to proceed with the hearing on Bartow. Village Solicitor Vondah Vanderhorst asked that her response to Bartow's Solicitor Steve Cottrell's, letter to council be read into the record. As follows: GWYN & AUBRY, Attorneys at Law 110 West Second Street, Perrysburg, Ohio 43551-0302. August 9, 1988, Steven E. Cottrell Attorney at Law, Cottrell and Cottrell, 634 Main Street, Genoa, Ohio 43430. RE: Village of Genoa/Cheryl Bartow.

Dear Mr. Cottrell:

In response to your letter of August 5, 1988 concerning your client, Cheryl Bartow, please be advised that the Genoa Village Council acted lawfully on July 9, 1988 when it declared the office of the Clerk-Treasurer vacant, and that the Mayor acted within his power as Mayor when he filled that vacancy pursuant to Ohio Revised Code Section 733.31(A).

As you know, your client was to take office as Genoa Clerk-Treasurer on April 1, 1988. It is my understanding that she did take her oath of office in which she swore to faithfully, honestly and impartially discharge the duties of the office of Clerk-Treasurer. I also understand that she did not give bond for her term of office as required by Section 149.08 of the Codified Ordinances of Genoa and by Section 733.69 of the Ohio Revised Code. Even more significantly, however, your client never performed any of the duties of Clerk-Treasurer from the time she took her oath of office until the office was declared vacant on July 9, 1988.

Section 731.49 of the Ohio Revised Code permits the legislative authority of a municipal corporation to declare vacant the office of any person elected or appointed to such office who, within ten days after he has been elected fails to give the bond required. Your client never formally notified the Council of her illness, however several Council members were individually aware of her situation. Because of that, the Council gave Ms Bartow more than ninety days in which to give bond and assume her duties as Clerk-Treasurer and during this extended time Ms Bartow, although performing no duties, received her full salary as Clerk-Treasurer.

The office of Clerk-Treasurer is vital to the operation of the Village. In order to ensure that these vital duties were performed, the Village Council was forced to contract for the performance of the Clerk-Treasurer's duties. The taxpayers of the Village of Genoa were, therefore, paying twice for these services.

The Council and the Mayor have great sympathy for Ms Bartow in her illness. Their duty, however, is to the welfare of the Village of Genoa as a whole. The Village Council simply could not go on paying your client her salary while also paying another to perform your client's duties.

Therefore, in early July, the Mayor spoke to your client concerning this situation. It is my understanding that your client twice indicated to the Mayor that she was resigning and stated that she would deliver a written letter of resignation to him. Based on this representation by your client. the Council scheduled a special meeting to be held on July 9. On July 5 or 6 your client apparently changed her mind and indicated to the Mayor that her written confirmation of her resignation would not be forthcoming. Therefore, at the July 9th meeting, the Council declared the office of the Clerk-Treasurer vacant. Following this declaration, the Mayor, pursuant to ORC 733.31, filled the vacancy.

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As previously stated, it is our opinion that the actions of the Council and Mayor were legal and in the best interest of the citizens of Genoa. However, these actions have been called into question. Therefore, in order to ensure that the taxpayers of Genoa will not be further required to pay twice for the services of the Clerk-Treasurer and to ensure that your client is afforded any due process that she may be entitled to, the Mayor, as part of his executive duty to generally supervise the officers, filed with Council written charges against Ms Bartow pursuant to Section 733.35 of the Ohio Revised Code. Before these charges were actually filed, the Mayor and Councilman talked to Ms Bartow about the charges and suggested that she discuss the situation with legal counsel and anyone else she should choose. After your client was afforded this opportunity, the charges were then formally filed and served according to statute.

Upon receipt of these charges the Village Council, pursuant to Section 733.37 of the Ohio Revised Code, suspended Ms Bartow from any duties as Clerk-Treasurer until the charges can be heard. Section 733.36 of the Ohio Revised Code provides that the charges be heard at the next regular meeting of the Village Council, in this case, August 15 at 7:30 P.M.

The statute also provides that the Village Council, if it chooses, can extend the time for the hearing, but only upon the application of the accused. If your client intends to ask for a continuance, please notify me immediately.

Both the executive and legislative authorities of the Village of Genoa continue to have great sympathy for Ms Bartow on a personal level and deeply regret the apparent necessity of adversarial proceedings. As officers and legislators of the Village, however, they must act to fulfill their duties to the citizens and taxpayers of the Village. Your client has never indicated when if ever, she would be able to perform any of the many duties of Clerk-Treasurer. The Village cannot continue to pay Ms Bartow her salary while at the same time paying another to actually perform her duties. The Mayor and Village Council have not only acted legally, they have acted in the best interest of all the citizens of Genoa.
Yours truly, Vondah T. Vanderhorst, Village Solicitor.

Village Solicitor Vondah Vanderhorst further emphasized sympathy extended to Ms Bartow for her illness.

Mr. Cottrell responded that he is not here to contest the actions in that removal from office can be done only two ways ORC 733.72 and by removal by recall.

Mayor Harbal then read the charges against Ms. Bartow:

Pursuant to Ohio Revised Code Section 733.35, you are advised that the Mayor of the Village of Genoa has reason to believe that you have been guilty in the performance of your official duties, of nonfeasance and gross neglect of duty to with:

Since the taking of your oath of office in April 1988, you have failed to perform the following duties of the Clerk-Treasurer.

- 1) To attend any and all meetings of the Village Council;
- 2) To keep a record of the Council's proceedings and of all rules, bylaws, resolutions and ordinances passed and adopted;
- 3) To keep the books of the Village, exhibit accurate statements of the moneys received and expended, of all the property owned by the Village and the income derived therefrom, and of all taxes and assessments.
- 4) To keep accurate accounts of all moneys received, showing the amount thereof, the time received, from whom, and in what account paid.
- 5) To keep an account of all disbursements showing the amount thereof, the time made, to whom, and in what account paid.
- 6) To demand and receive of the County Treasurer, Taxes levied and assessments made and certified to the County Auditor.

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- 7) To make a quarterly account.

As the Clerk-Treasurer you have failed to perform your statutory duties from the taking of the oath of office until the present, but you have accepted the salary during this time. This gross neglect of duty has caused the Village to expend additional funds to enable these duties to be fulfilled. At no time have you formally notified the Executive or the Legislative authority as to the reason for your failure to perform your duties or as to when you would undertake to perform them.

Village Solicitor Vanderhorst called witnesses to be sworn in by President of Council Verkin. Two recordings were being taken of the proceedings Village Council use of tape recorder and Cottrell's use of court reporter Jane Held.

Ms Vanderhorst called the first witness Edward Griswold, Village Administrator. Sworn in by Pres of Council Verkin.

Ms Vanderhorst called Mayor Harbal as witness. Sworn in by Pres of Council Verkin. Verkin took the chair.

8:30 pm Solicitor Peter Gwynne entered the meeting. When questioned by Cottrell, stated he and Vanderhorst represented Council as a firm.

Ms Vanderhorst called Council member Russ Motter as witness. Sworn in by Pres of Council Verkin.

Ms Vanderhorst called Councilman Verkin as witness. Sworn in by Councilman Motter.

Steve Cottrell called Councilman Bob Skilliter as witness. Pres of Council Verkin swore in Skilliter.

Cottrell moved for two exhibits into record. A letter to Bartow from Griswold - Exhibit A and a letter of charges from Mayor Harbal to Bartow - Exhibit B.

Solicitor Vanderhorst stated Council has no further witnesses. and issued closing statements and that the issue be placed before Village Council and Council has a vote as to their intentions

Cottrell stated he has nothing to add.

Motion was made by Bower and seconded by Motter that according to ORC 733.36 Cheryl Bartow be removed from office for Gross neglect of duty and nonfeasance in office.

Roll call vote: Bower, VERkin, Motter, Skilliter. All yes. (4) Donley Naye. (1) Passed.

Mayor Harbal requested a five minute recess.

Meeting reconvened.

Verkin mvoed and Bower second to approve the minutes as presented Roll call vote: Bower, Verkin, Motter, Donley and Skilliter. All yes. (5) Passed.

ADMINISTRATORS REPORT: Mr. Griswold gave the following report.

- 1) We will be completing our street resurfacing this week depending on the weather and the availability of materials.
- 2) The testing of Transformers for PCB's is to get underway today, August 15th. Once the samples have all been taken, we will get the results in approximately 30 days.
- 3) Our new Sewer Jet Truck should be ready for delivery within the next week. This will enable us to embark on a regular sewer cleaning program beginning this fall.

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- 4) Ground breaking for the new Utility Building will get underway any day now. The contracts have all been signed, and the building has been ordered.
- 5) I have currently been working to supply E.D.A. with more information which they have requested regarding our Grant Application. Hopefully, this information can be submitted to Chicago this week. You have a resolution before you tonight which is needed to send to Chicago.
- 6) I have been working with AMP-OHIO the past few weeks regarding power which we purchased from The Wheeling Power Co. in 1981 and 1982. Seems they overcharged us at that time, and we will be receiving a refund check this week for a little over Thirty Thousand Dollars.
Note: Check for \$30,492.30 received today 8/15/88.
- 7) We hope to get going full speed ahead on the sidewalk repair program, just as soon as we wrap up our street improvement work.

CLERK-TREASURERS REPORT:

Mrs. Smith presented the monthly financial report.

PARK BOARD: Mr. Skilliter stated the Park Board held a Hawaiian Luau Rally Saturday August 13 and that attendance was fairly good.

ZONING: Harold Wepler announced the hearing on a zoning change has been cancelled. The prospective property owners have not been able to get financing. If at a later date they do purchase the property and wish the change, the hearing can be held in as much as it has been advertized.

He stated there are several violations around town on which he may require legal advise.

The Solicitor suggested an ordinance limiting yard sales per house and the length of time to be held in order to eliminate the continuous sales.

Location of various junk cars around town were discussed and Bower stated he felt the police should be enforcing the garbage and junk car ordinances and making the necessary citations for violations.

MAYOR: Mayor Harbal stated he has a replacement for the Zoning Board and will make the appointment at the next regular meeting.

Bower moved and Motter seconded that Theresa Skilliter and those working on the improvement of the walkway should be sent a letter of recognition and thank-you for the work on improving the walk-way. He stated council should recognize this service to the community. Skilliter stated that he and Verkin had installed a nearby water meter and an underground water system to make it easier supply water to the plants and evergreens.

Roll call vote: Bower, Verkin, Motter, Donley and Skilliter.
All yes. (5).

COMMITTEE REPORTS:

Safety- Donley stated she would be calling a meeting soon.

Economic Development- Verkin stated the meeting will be next month.

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ORDINANCES AND RESOLUTIONS:

Motter presented ORDINANCE 40-88 AN ORDINANCE ADOPTING A VILLAGE INCOME TAX CODE AND DECLARING AN EMERGENCY. Motter moved and Skilliter second that the rule requiring Ordinances to be fully and distinctly read on three different days be dispensed with in accordance with Section 731.17 ORC. Roll call vote: Bower, Verkin, Motter, Donley and Skilliter all yes. (5) passed.

Motter moved that ORDINANCE 40-88 be passed as an emergency measure in accordance with ORC 731.20. Motter explained there no changes in the income tax ordinances this is to compile all the amendments and the original ordinance into one ordinance.

Verkin seconded the motion. Roll call vote: Bower, Verkin, Motter, Donley and Skilliter all yes. (5). passed.

Motter presented ORDINANCE 61-88 AN ORDINANCE AMENDING ORDINANCE 16-88 AND DECLARING AN EMERGENCY. Motter moved and Bower seconded that the rule requiring Ordinances to be fully and distinctly read on three different days be dispensed with in accordance with Section 731.17 ORC.

Roll call vote: Bower, Verkin, Motter, Donley and Skillier all yes. (5) Passed.

Motter moved that Ordinance 61-88 be passed as an emergency measure in accordance with ORC 731.20.

Motter stated this ordinance is to establish a new wage classification and provide equitable salary range.

Motion seconded by Verkin, Roll call vote: Bower, Verkin, Motter, Donley and Skilliter All yes. (5) Passed.

RESOLUTION 62-88

Bower moved and Verkin second to adopt Resolution 62-88 A RESOLUTION AUTHORIZING THE USE OF WATER REVENUES TO FINANCE THE VILLAGES SHARE OF THE WATER LINE EXTENSION TO GUARDIAN INDUSTRIES.

Roll call vote: Bower, Verkin, Motter, Donley and Skilliter. All yes. (5) Passed.

There being no further business the Mayor entertained a motion for adjournment.

Bower moved and Verkin seconded.

John J. Harbal
Mayor

Barbara A. Smith
Clerk/Treasurer

