

SLT city attorney requests public airing of grievance



Jacqueline
Mittelstadt

By Kathryn Reed

Transparency within South Lake Tahoe's city government is about as clear as mud, which is appropriate since plenty of it is being slung. But what it's sticking to is even less clear.

On Oct. 20 the City Council is expected to decide Jacqueline Mittelstadt's future as city attorney. Mittelstadt told *Lake Tahoe News* she is going to request the dismissal hearing be in open session.

Also that day, the council is scheduled to discuss in closed session City Manager Dave Jinkens' actions related to personnel issues.

"I expect to be fired," Mittelstadt said Wednesday. "The community is being short-changed and money is not being spent with transparency and openness. (The community) needs to know what's going on. It's a bigger issue than me."

Mittelstadt and Patrick Enright started work June 1 as attorneys for the city. It was Councilman Bruce Grego who lobbied his colleagues to hire two instead one lawyer, as had always been the policy. This was so the city could reduce the

number of outside attorneys it hires.

To curtail spending, council gave direction to the new attorneys to draft an ordinance what would prohibit the city manager from hiring outside counsel without authorization from the city attorneys or City Council.

The language and action got muddled when Mittelstadt missed a meeting during the summer, and Enright and Jinkens tweaked the language to make it weaker.

It had appeared the council unanimously supported keeping legal matters in the city's legal department.

However, in a 180-degree twist, Grego got consensus from the council to have on next Tuesday's agenda an item that would return the hiring of outside legal counsel to the city manager.

Grego was unavailable for comment Wednesday night.

Cost of doing business

Another initial directive from the council to Enright and Mittelstadt was to find out how much money was being spent on outside counsel.

Mayor Jerry Birdwell said before the attorneys came on board he repeatedly asked for those figures from Jinkens and Finance Director Christine Vuletich. He said he and Councilwoman Kathay Lovell asked for the numbers when they were acting as the hiring subcommittee. (Lovell was unavailable for comment Wednesday night.)

"We requested the amount we were spending on outside counsel," Birdwell said. "We were given \$196,000. That's what was budgeted. I assumed that we were working within that budget. Little did I realize that was not so."

Mittelstadt and Enright uncovered about \$800,000 had been

spent in a single year on outside counsel.

Birdwell said the money came out of undesignated reserves from various departments.

At one point this summer it looked like the council was going to make the finance director's position be accountable to the elected officials, as is the case for the city attorneys and city manager.

Vuletich reports to Jinkens. She is the one who for the past two years has proposed a budget that says the hotel tax is going to increase. Projections were off by \$1 million for 2008-09. (Despite the fiscal year beginning Oct. 1, the council still doesn't have a budget for 2009-10.)

With more convoluted discussion by the electeds, Councilman Hal Cole decided to let his idea about the change fade away.

By keeping with the finance director being accountable only to the city manger, the city manager then has discretion to spread cash around and spend with little or no oversight.

Complaints roll in

As the expenditures on outside counsel were coming to light, Vuletich on Aug. 10 filed an Employer's Resource Management Association complaint against Mittelstadt and Enright. Mittelstadt has never seen the complaint nor has it been resolved.

Mittelstadt's attorney and the city's outside counsel hired to handle her situation disagree whether the ERMA needs to be settled before the council votes next week to keep her on the city payroll.

At some point, Mittelstadt filed an ERMA complaint.

Why Enright is not fighting for his job like Mittelstadt, is part of the lack of transparency at the city.

"My reports resulted in retaliation against me," Mittelstadt said. "I do believe wrongful conduct occurred (by others)."

But the fact is Mittelstadt and Enright worked side-by-side, with both their names on the reports.

One of those reports was uncovering a \$69,000 bill approved by Jinkens for outside counsel. Any expenditure more than \$30,000 was supposed to be brought to the council for its OK.

Asked if he thought someone might be getting a kickback from the contracts, Birdwell said, "I have no reason to believe that at all."

Jinkens did not return a call to his home last night.

It would take outside legal counsel to do a forensic accounting of the city's books, of employee bank accounts as well as councilmembers' to determine if anything inappropriate, illegal or unethical has occurred.

On Aug. 14, Jinkens sent an email to all five councilmembers about the complaint Vuletich had filed.

On Aug. 17, Jinkens sent Mittelstadt an email with eight points outlining how he saw fit to resolve the employee complaints. All councilmembers have reportedly been given a copy of this letter.

Point No. 3 says, "Any matter or consideration to make the Finance Director an at-will employee reporting to the City Council will be stopped."

Mittelstadt didn't respond to the email. However, she met in private with Jinkens after the Sept. 1 council meeting. He printed a copy of the email for her and read it to her.

Mittelstadt said in discussing the points with Jinkens she was left to believe that if she didn't push for Vuletich to be under the purview of the council, Jinkens would get Vuletich's

complaint against her dropped.

Mittelstadt said she wasn't going to be part of unethical behavior.

Two days later Mittelstadt was told the majority of the council wanted her resignation and that she had until noon that Friday to make up her mind. She said no.

It was on a 3-2 vote in closed session Sept. 3 (a vote that has never been put into the public record). Grego, Lovell and Cole said start the termination process.

Cole's voicemails were full and he did not answer the phone Wednesday night.

On Sept. 14, Crawford hand-delivered to Human Resources Director Janet Emmett a complaint against Jinkens. Crawford believes Jinkens violated the privacy of Vuletich, Mittelstadt and Enright when he sent the Aug. 14 email. Part of his complaint also includes the Aug. 17 email.

It's in closed session Tuesday that this matter will be talked about.

The future

To add a layer of muck to the situation, the El Dorado County Grand Jury is looking into the whole South Lake Tahoe city attorney situation.

"Every reason I've heard for why they are getting rid of me is not true," Mittelstadt said.

She wants the truth to be in the public domain – that's why she wants an open hearing that will be televised and recorded for perpetuity.

If fired, she will be owed three months pay. She has been on paid administrative leave for six weeks at a cost of more than

\$10,000 a month to the city.

If she were to sue the city, the expense of hiring this attorney that all five councilmembers had originally highly touted, could skyrocket. It is not known how much the city has paid in legal fees to terminate Mittelstadt's employment.

Mittelstadt realizes fighting is a delicate situation for her professionally. She could lose her license if the state rules she said more than she should have.

"But it's important for the public to have the truth," Mittelstadt said.