

Truth behind city attorney debacle expected Tuesday



Jacqueline
Mittelstadt

By Kathryn Reed

Battle lines are drawn and threats have been issued all because of something the public is not completely privy to despite it being their money being spent on this contentious issue.

In these economic times when staff is being laid off, furlough days proposed, and a budget for 2009-10 that will be a month overdue for a city that does nothing to get visitors to come to a town based on tourism, the majority of the council is choosing to spend thousands of dollars to fire an employee.

Specific reasons why the city wants to get rid of Jacqueline Mittelstadt, the city attorney hired in June, are not known.

“It’s totally performance based. She is an at-will employee and things didn’t work out. And, in fact, they went sideways,” Councilman Hal Cole said Oct. 18.

Cole would not elaborate on what “sideways” means. He said Tuesday’s hearing will explain why Patrick Enright, the other city attorney hired at the same time, is not fighting for his job as well.

Mittelstadt has been receiving her \$10,000/month salary since Sept. 8 even though she is not doing any city work. That is the date she was put on paid administrative leave.

It's a bit of an irony that outside counsel is being paid to help terminate her when she and Enright were hired to reduce the use of outside counsel.

Mittelstadt is scheduled to go before her five bosses, aka the South Lake Tahoe City Council, on Oct. 20 in open session to defend her right to remain city attorney.

Even though the item is at the end of the agenda, it is likely to be moved up sooner and could be heard closer to 10am.

Telephone threats

On Oct. 19, Jack Hughes, whose firm Liebert Cassidy Whitmore of San Francisco is representing the city in the personnel issue, called *Lake Tahoe News* and in a threatening tone said this publication better not release information from confidential documents that it has obtained.

"It would be harmful to the public. It would be harmful to the city," Hughes said. When asked which it was really harming, Hughes said, "The city and the public is one in the same."

It's expected the public will disagree with that statement at Tuesday's meeting. Hughes isn't going to be at the hearing. Instead, Dick Whitmore, who was at the Oct. 6 meeting, is slated to argue the city's case.

A less threatening comment came from City Manager Dave Jinkens' wife, Terri, on Oct. 18. She said, "You're castrating a good man and that is beneath you." Then she abruptly hung up the phone.

Confidential document

The 16-page document that has Hughes worried if it's released

is dated Oct. 5. It was recently left at the *Lake Tahoe News* office by an unknown source. The City Council was given a copy of it by their attorney earlier this month.

The information is from Jay Resendez with Bricton & Cohn of San Diego, the firm representing Mittelstadt.

Not previously disclosed items in the document include partial information from the Sept. 8 letter from the council to Mittelstadt advising her of their intent to fire her. "The reasons for the intended removal are incompatibility of management styles and work performance that is inconsistent with the City Council's expectations."

Councilmembers Cole, Kathay Lovell and Bruce Grego voted Sept. 3 to begin the termination proceedings. Lovell will not talk about personnel issues and Grego remains unavailable for comment.

The document questions whether the Brown Act, the state opening meeting law, has been violated; it gets into why Mittelstadt believes she is being retaliated against; and includes information about the Finance Department being unable to provide consistent figures.

"On August 3, 2009 the Finance Department staff emailed Ms. Mittelstadt and confirmed her conclusion that the numbers did indeed frequently differ. The Finance Department revealed a serious accounting problem reporting that: - it is hard to compare apples to apples when so many different expense codes are used for these legal bills. On August 6, 2009, Ms. Mittelstadt notified the Council Finance Committee of the Finance Department's explanation," the document says.

Mayor Jerry Birdwell and Cole are the finance committee.

The document goes on to say Lovell was notified Aug. 3 that Jinkens has two reserve funds at his disposal.

Birdwell at one meeting called them "slush funds."

Some of the more alarming accusations are on Page 10 of the document where Mittelstadt's attorney writes, "In an additional attempt to blackmail the City from further investigating the payment to outside counsel without the City Council's approval, during a July 15, 2009 meeting between the City Manager and both the City Attorney [Ms. Mittelstadt] and the Assistant City Attorney [Mr. Enright], the City manager threatened litigation against the City and the Mayor personally if the investigation continued."

Birdwell said he had been told of Jinkens' threat, though Mittelstadt did not provide the information to him.

"I do not have the referenced documents. In my capacity as City Manager I act within the scope of employment to protect employees and City government," Jinkens said in an email to *Lake Tahoe News*. "Unfortunately and regrettably, I am unable to comment on the pending personnel matter with Ms. Mittelstadt on the advice of counsel. I am truly sorry that I cannot provide more information to you."

Outside counsel

The firm representing Mittelstadt is also the firm the council hired Aug. 4, upon her recommendation, to represent the city against ATM, the former transit operator that is suing the city for breach of contract.

Enright would not return calls Oct. 19 seeking comment as to whether the firm was still under contract or if it had been paid.

Birdwell does not believe the contract is still in effect.

Grumblings have come from councilmembers about the continued hiring of outside counsel. However, it was the council at the Aug. 4 meeting that hired two other firms – one to file a

motion related to a Lahontan Water Board matter and the other to handle an employment issue.

All three were on the Consent Agenda. Often the public does not scrutinize this segment of the agenda. But if the public or a councilmember wants to pull it for further discussion, that's possible.

About 10 firms were in place doing legal work for South Lake Tahoe before Mittelstadt and Enright came on board. They handled things like the Meyers Landfill, Johnny Poland, redevelopment and personnel issues.

It was the council that told Mittelstadt and Enright to find out how much money has been spent on outside counsel. It was disclosed in their joint June 30 report that about 90 percent of the nearly \$800,000 that has been spent on outside counsel was "incurred by the Departments without the involvement of the City Attorney's office."

All along any contract of more than \$30,000 was to be approved by the council. That has not been the case, as proved by Enright and Mittelstadt. It was also noted in that report that firms are overbilling the city and the Finance Department run by Christine Vuletich is paying the bills without scrutiny.

That report says, "As a result of the lack of consolidated oversight, application of consistent hiring and/or billing requirements that conform to best billing practices in the legal industry, and the lack of monitoring of total outside counsel expenditures, the City may be losing money on legal fees."

City Manager Jinkens response to the attorneys' report dated June 28 says, "The concern by staff in the past and only interest has been to receive from our legal department competent and timely legal advice on pressing municipal matters."

It is well known inside city hall that Jinkens and former City Attorney Cathy DiCamillo did not get along. They were even ordered to counseling to help enable them to work together better.

The Jinkens' issue as it relates to personnel matters is scheduled for closed session Tuesday.

Part of this whole mess is how he handled a complaint filed by Vuletich against Mittelstadt and Enright. Mittelstadt was given a copy of the complaint Oct. 16.

Jinkens was hired in August 2002. His contract expires next summer. Per normal course of action, his review is scheduled after the first of the year. It is not known if the council would buy out his contract if his services were no longer wanted.

The public will be able to comment during Mittelstadt's hearing – which, after all, is who the council reports to.