

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM
APRIL 2, 1997
3 PM**

SPECIAL MEETING

I. LEGAL DEPARTMENT

Discussion - Audit Report Concerning Legal Department
(Continued from EPC Meeting, March 20, 1997)

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Any person who might wish to appeal any decision made by the Environmental Protection Commission regarding any matter considered at the forthcoming public hearing or meeting is hereby advised that they will need a record of the proceedings, and for such purpose they may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based.

AGENDA ITEM COVER SHEET

Date: March 11, 1997

Agenda Item: Legal Department: Audit Issue - Legal

Description/Summary:

The Commission directed that the legal department issue be placed on the EPC agenda for final disposition.

[in addition to other issues provided by Commissioners to the Executive Director no later than March 7 - none were submitted].

The Commission also requested that the County Attorney be asked to provide her response in writing on this issue. A memo was immediately sent to request submission by March 12 so that it might be included in the agenda backup.

Attached for your information (in order presented):

- DMG's Recommendation and Executive Director's Response
- Background
- Executive Director's Discussion of issues
- Executive Director's Recommendation
- Copy of Tribune Editorial
- County Attorney's Response

Commission Action Recommended:

- a) Approve Executive Director's recommendation response regarding the legal issue.
- b) Authorize Chair to forward management response to Audit for inclusion in Final Report so that it can be sent to our Legislative Delegation as required by Special Act.

DMG's Recommendation

We recommend reassigning the EPC's Assistant Attorney to the County Attorney's Office.

Executive Director's Response

The Executive Director strongly recommends against the auditor's suggestion. As described in the attached pages:

- there would be no financial savings to EPC in implementing the change
- there may be increased costs
- there would be considerable disruption and administrative inefficiency

Background

DMG suggested in its recommendations to the EPC audit that the issue of consolidating the EPC Legal Department with the County Attorney's Office be considered during the cross-organization study. This issue was considered during the cross-organizational study.

The auditor's final recommendations are:

- a) We recommend that the PC and EPC consider making greater use of the County Attorney's Office.
- b) We do not recommend any changes regarding the EPC's Chief Counsel...we have concluded that the EPC's Chief Counsel is a vital member of EPC's management team. We also believe that EPC's Chief Counsel can play an important role in managing legal services provided by other attorneys. Her position should be retained by EPC.
- c) As an alternative, we recommend reassigning the EPC's Assistant Attorney to the County Attorney's Office. We believe that assigning the EPC's Assistant Attorney to the County Attorney's Office will benefit that attorney by providing greater cross-fertilization of legal skills (e.g., litigation, environmental, land use, civil and personnel). It will expose the Assistant Attorney to a larger pool of attorneys for support and guidance. We also recommend that the Assistant Attorney continue to be located at EPC one to two days per week.
- d) The County Attorney's Office should establish procedures to assist its attorneys in identifying and avoiding potential conflict.

Executive Director - Discussion

The is no identified need for the change: DMG references, without discussion or supporting findings, the general benefit of “cross-fertilization,” support, and guidance provided through association with other attorneys. There is no doubt that benefit is to be gained by observation and discussion with other practitioners, isolation being one of the recognized difficulties faced by sole practitioners and small law offices.

However, EPC’s Assistant Attorney, who practices environmental regulatory enforcement, has little in common with most of the substantive areas of law handled by the County Attorney’s Office. His practice requires coordination with the Office of General Counsel of the Florida Department of Environmental Protection, and his work each semester with the Stetson Law School internship program helps to keep him current on legal trends. Regarding general civil and procedural practices, EPC’s Assistant Attorney complies with the Florida Bar’s continuing legal education requirements, and takes advantage of many of the opportunities offered by the Hillsborough County Bar Association, the Florida Bar, serves as Barrister for the Tampa Bay Inn of Court, and is involved with other professional associations.

There is no efficiency to be gained: EPC has taken advantage of the County Attorney’s services a few times in the past, to represent the agency where they possessed the required non-environmental-regulatory expertise (*Baity/Johnson* vehicle accident case where the County was also a party), and to represent the Commission where internal conflict existed (*Church of Latter Day Saints*, where the Commission and the Director were separate defendants; *Buzbee* and *Frantz* where EPC counsel had represented the Director before the Hearing Officer). With the Assistant Attorney position, the potential for internal conflict is minimized. In one other case, *Coulter vs. BOCC*, the County Attorney’s Office represented the County in a matter related to a prior EPC case. Contrary to rumor, the County Attorney’s Office is not routinely called upon to handle matters which are too extensive or complex for EPC’s legal staff to handle, or because EPC’s staff is overwhelmed in any way. It appears rather, that in a modest number of cases (4 out of many hundred in the last several years), the County Attorney has been asked for assistance where efficiency and economic resources could be maximized with in-house counsel, where the expense of outside counsel might otherwise have been required.

The County Attorney’s Office has indicated that 237 8-hour days were expended between October 95 and October 96 in representing EPC. No response to my request for an accounting has been forwarded; however, the only case for which the County Attorney represented EPC during that time period, was the *Baity/Johnson* case. There must be some mistake in the numbers, since I am certain that the County Attorney’s Office would not provide legal advice to EPC members on EPC issues without first conferring with their counsel.

The recommendation is impractical: Splitting EPC representation and locating EPC’s primary enforcement counsel in another agency, would require administrative reorganization for both EPC and the County Attorney’s Office. Just as supervising an employee not within ones control poses management burdens, managing the coordination and information flow and overseeing case progress would require administrative procedures currently not existing. Reporting to two bosses is difficult. Although managing attorney-client communications is routine for private practitioners, it is the source of the greatest difficulty and controversy for the legal profession, and clients who have multiple litigation matters tend to be the ones with in-house counsel so that they can maintain better control. Locating the Assistant Attorney at EPC one or two days a week would facilitate access to EPC staff, but would require maintaining twice the space and support for one person. And conflict issues would be more prevalent if EPC’s enforcement attorney were transferred to the County Attorney, necessitating the development and application of procedures to identify conflicts of interest, and likely resulting in more cases being handled by more costly outside counsel.

by more costly outside counsel.

There is no cost savings to be gained: DMG states that “there would be little, if any, fiscal impact associated with reassigning the EPC’s Assistant Attorney.” See, page 46 of the Cross Organizational Study Report. Earlier, DMG states that “potential cost savings could be outweighed by conflict and quality of service considerations.” See, page 43. Furthermore, the administrative costs for managing outside legal representation may result in an increase.

Executive Director’s Recommendation

I would like my staff to work with the County Attorney’s Office to identify better ways to share information and keep each other apprised of matters in which we, and our respective clients, have a mutual interest. We should:

- (1) have a better understanding of which attorney works on what type of case so that we would know who to contact for information,
- (2) establish a method for recognizing cases of mutual interest and concern, and
- (3) meet periodically to discuss the status of issues and progress in their resolution.

It would also be useful to develop similar connections with the legal offices of each municipality. EPC’s Legal Department already coordinates on a regular basis with the several law enforcement agencies, and finds the approach very efficient and productive.

Don't undercut EPC independence

Hillsborough County commissioners may have the county attorney take over the legal work for the Environmental Protection Commission, which now has its own legal staff.

When County Attorney Emmy Acton estimated she could do the job for \$105,000 less than the EPC, commissioners asked her to pursue the matter and also study what could be saved by having her office take over the legal services for the sheriff, tax collector, clerk of the court, planning commission and EPC.

Certainly we want the county to achieve every efficiency possible. So we applaud the commissioners' motives. And the county attorney probably should take over the legal work for some additional agencies. But the ill-advised effort to strip EPC of its legal arm shows a lack of understanding of EPC's role and a disregard for its crucial mission.

There is a good reason the EPC has its own attorney: The county is a major polluter. EPC frequently cites the county for violations involving wastewater treatment, solid waste, road work and other activities. It makes no sense for the county attorney's office to handle both the enforcement and defense in such pollution cases.

This blatant conflict of interest could increase pressure for lawyers to go easy on cases involving the county. To avoid a conflict, the county attorney's office would have to hire outside attorneys. This would lead to increased costs because these attorneys would charge at hourly rates. Further, the county would sacrifice considerable expertise.

Now, members of EPC's legal staff know the history of regulations, are familiar with past cases and understand how to quickly resolve matters. Moving EPC's legal work into the county attorney's office would make the process more cumbersome. It would make it more difficult for EPC to enforce environmental laws. Is this what the commissioners want?

At least some commissioners don't seem to understand that EPC is not just another branch of county government. It was established by the Legislature as an independent body — precisely so it could better safeguard the environment and not be subject to the same political pressures as are other county offices.

When commissioners sit as the Environmental Protection Commission, they do not simply act as county commissioners. They serve as the county's environmental guardians. They oversee environmental protections for the entire county, including its municipalities.

To be sure, EPC should not be spared budget cuts. All government functions should be streamlined whenever possible. But commissioners should not cripple the EPC agency or undermine its vital mission. After all, in rapidly growing Hillsborough, we do not get a second chance at environmental protection. Citizens understand this even if commissioners do not.

Robbing EPC of legal authority will not increase efficiency, cut costs or improve environmental protections. Commissioners should drop this unfortunate idea.

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MEMO

TO: Emmy Acton, County Attorney

FROM: Sara M. Fotopulos, Chief Counsel *SMF*

DATE: February 28, 1997

SUBJECT: Response to EPC Audit Recommendations

At the EPC workshop yesterday, commissioners directed that the issue of the legal department staffing be placed upon the EPC agenda for its March 20, 1997 meeting. They also directed that all responses be in writing and included as agenda backup.

Because your department would be affected if the recommendation were implemented, the commissioners are interested in your response to the following recommendation:

...we recommend reassigning the EPC's Assistant Attorney to the County Attorney's Office...We also recommend that the Assistant Attorney continue to be located at EPC one to two days per week...The County Attorney's Office should establish procedures to assist its attorneys in identifying and avoiding potential conflict.

Please provide your written response to Tom Koulianos of our offices by noon of March 12, so that it might be included with the agenda backup.

Cc: Commissioner Platt
Tom Koulianos



This is not an official record/verbatim. Should be used for informational purposes only.

COMMISSIONER PLATT: GOOD MORNING. THE HILLSBOROUGH COUNTY ENVIRONMENTAL PROTECTION COMMISSION WILL PLEASE COME TO ORDER....

COMMISSIONER PLATT: THE NEXT IS THE AUDIT ISSUE.

MS. FOTOPOLIS: COMMISSIONERS, IN YOUR BACKUP YOU HAVE THE STAFF'S RESPONSE TO THE RECOMMENDATION. WE DID NOT YET HAVE A RESPONSE, AS YOU ASKED FROM THE COUNTY ATTORNEY'S OFFICE, HOWEVER THAT I SEE THAT SHE IS HERE.

COMMISSIONER PLATT: AND WHAT IS -- WHAT WAS THE RECOMMENDATION -- SO WE KNOW WHAT WE ARE TALKING ABOUT IN THIS ISSUE, WILL YOU TELL US WHAT IS THE RECOMMENDATION OF THE AUDIT?

MS. FOTOPOLIS: THE RECOMMENDATION OF THE AUDITORS FOLLOWING THE CROSS-ORGANIZATIONAL STUDY WAS TO REASSIGN E.P.C.'S ASSISTANT ATTORNEY TO THE COUNTY ATTORNEY'S OFFICE.

COMMISSIONER PLATT: ALL RIGHT. DO YOU WANT TO -- DO YOU WANT TO SPEAK TO THAT ISSUE?

MS. FOTOPOLIS: I WILL BE HAPPY TOO. I DON'T BELIEVE THAT THE BENEFITS THAT WOULD BE OBTAINED WOULD OUTWEIGH THE DISRUPTION AND THE ADMINISTRATIVE DIFFICULTY, THE MANAGEMENT DIFFICULTY, OF THE RECOMMENDATION. THE FINANCIAL BENEFIT IS ZERO AND POTENTIALLY A NEGATIVE ONE, AND SO I WOULD THINK THAT IT'S NOT A GOOD IDEA.

COMMISSIONER PLATT: OKAY. EMMY, DID YOU WANT TO SPEAK TO IT?

MS. ACTON: GOOD MORNING, COMMISSIONERS, WE ARE HERE, I KNOW, ON THAT ONE ISSUE, BUT I JUST WANTED TO PUT THIS INTO SOME CONTEXT BECAUSE I FEEL IT'S GOTTEN KIND OF SWIRLING OUT OF CONTROL HERE AND I NEVER HAD A CHANCE TO SPEAK TO YOU DIRECTLY ABOUT THIS. FIRST OF ALL, AS YOU MAY RECALL, I WAS ASKED AT A BUDGET MEETING SOME YEARS AGO TO LOOK INTO A WAY OF CONSOLIDATING LEGAL SERVICES, NOT JUST TO SAVE SOME MONEY, BUT TO MAKE THE LEGAL REPRESENTATION OF ALL OF THE HILLSBOROUGH COUNTY AGENCIES AND AUTHORITIES AND ALL THESE THINGS THAT SOMEHOW IMPACT YOU MORE EFFICIENT. AND I DID THAT, AND WE'VE HAD VERY GOOD VERY PONS -- RESPONSES FOR INSTANCE

WITH ROB TURNER. WE ARE DOING A GREAT DEAL OF HIS WORK, ALL OF HIS EMPLOYMENT WORK, ALL OF HIS PURCHASING WORK AND WE WILL BE SAVING YOU LOTS AND LOTS OF MONEY IN OUTSIDE COUNSEL THAT WAY. E.P.C. WAS INCLUDED IN THAT, AND SO WAS THE PLANNING COMMISSION. I ESTIMATED I COULD SAVE \$100,000 THAT WAY. THE AUDIT CAME BACK AND SAID, MAYBE \$70,000. BUT, YOU KNOW, THAT MAY NOT BE THE REAL ISSUE. THE REAL ISSUE MAY BE THE EFFICIENCY. I THINK THAT MY OFFICE IS A HUGE RESOURCE FOR THIS COUNTY. I HAVE GOT ALL KINDS OF CROSS-TRAINING GOING ON UP THERE. THEY HAVE -- WE HAVE A GOOD OFFICE. WE DO 100 PERCENT LEGAL WORK. WE DON'T DO ADMINISTRATIVE WORK, AND WE HANDLE CASE LAW, WE HANDLE PURCHASING; WE HANDLE ENVIRONMENTAL LAW; WE HANDLE LAND USE LAW; WE HANDLE PERSONAL INJURY LITIGATION. THROUGHOUT THROUGHOUT THE YEARS WE HAVE DONE MORE AND MORE WORK FOR E.P.C., COMMISSIONERS. SOME OF THESE THINGS SARA HAS ASKED US TO DO, FOR INSTANCE, TSAR RAS -- SARA HAS ASKED US TO DO ALL OF HER PERSONAL INJURY LITIGATION. WE HANDLE ALL THE LAW SIGHTS FOR HER EVERY TIME AN E.P.C. DRIVER IS OUT THERE AND SMASHING UP AND ANY OTHER MISHAP WE TRY TO HANDLE THAT. WE TRY TO COORDINATE WITH HER OFFICE AND SOMETIMES IT IS MORE DIFFICULT THAN OTHERS. WE HAVE AN HOURLY RATE. I WENT BACK AND CHECKED THE TIME SHEETS, ONE THOUSAND HOURS IN THE LAST FISCAL YEAR FOR E.P.C.. THAT INCLUDES THE LITIGATION BUT THAT ALSO INCLUDES MATTERS THAT THIS BOARD HAS ASSIGNED THAT I HANDLE BECAUSE OF THE EXPERTISE IN MY OFFICE, OR BECAUSE OF THE EXTRA STAFF IN MY OFFICE. I REALIZE THAT SARA ONLY WORKS 50 PERCENT OF THE TIME ON LEGAL MATTERS AND HAS ONLY ONE ATTORNEY UNDER HER, AND WE JUST HAVE MORE RESOURCES. AND BECAUSE OF THAT, IN PART, I THINK YOU HAVE ASSIGNED THE PIG FARM TO ME. YOU HAVE ASSIGNED -- YOU HAVE ASKED THAT I HELP WITH THE MARTIN BROTHERS. YOU HAVE ASKED TODAY THAT I HELP WITH THE MINIMUM FLOWS. YOU ASKED FROM TIME TO TIME THAT I DO LOTS OF THINGS FOR E.P.C., AND THAT'S HOW I HAVE ONE THOUSAND HOURS RIGHT NOW. IN FACT, WHAT I'VE HAD TO DO IS ASSIGN AN ASSISTANT COUNTY ATTORNEY TO SIT AT THIS MEETING EVERY TIME IT OCCURS BECAUSE WE GET ASSIGNMENTS ALMOST EVERY TIME AND I HAVE NO WAY OF KNOWING THAT I'VE GOTTEN IT WITHOUT THAT. I THINK, YOU KNOW QUITE -- IF I

CAN SPEAK FRANKLY TO ROGER AND SARA AND TO ALL OF YOU.

MR. STEWART:

PLEASE DO.

ACT ABILITY THE -- THE ISSUE HAS BEEN RAISED THAT I HAVE THIS TERRIBLE CONFLICT, AND I CAN TELL YOU THAT, YOU KNOW, IT'S RAISED TO THE POINT THAT ROGER SAYS HE IS GOING RESIGN IF I REPRESENT YOU AND, YOU KNOW, THERE'S A LOT OF DEFENSIVENESS ON THIS ISSUE AND A LOT OF LACK OF COORDINATION WHEN I AM -- A LOT OF LACK OF COORDINATION WHEN I AM TRYING TO DO THE WORK THAT I ASK YOU TO DO. SOMETIMES WE GET COMPLAINTS THAT HAVE TO BE ANSWERED IN TWO DAYS AND WE FIND OUT WE HAVE TO ANSWER THEM TWO DAYS BEFORE IT IS DUE AND THIS IS CAUSING ME A LOT OF TROUBLE IN TRYING TO GET THE WORK DONE THAT YOU ASK ME TO GET DONE. WE HAVE LOOKED THROUGH THE BACKUP FOR THE -- WE HAVE LOOKED THROUGH THE BACKUP OF THE DIFFERENT TREATMENT FACILITY, HAZARDOUS WASTE GENERATION THAT GOES ON BY THE COUNTY. AND I FIND IN THE LAST THREE YEARS, THERE'S BEEN THREE CASES WITH WASTEWATER THAT HAS RISEN TO THE LEVEL OF ASKING FOR LEGAL ADVICE BY MY OFFICE. ZERO IN THE LAST THREE YEARS FROM THE SOLID WASTE DEPARTMENT, AND AS OF -- YOU KNOW, AS FOR THE SMALL QUANTITY FEE OF HAZARDOUS WASTE GENERATORS, WE OWN 70 OUT OF 1,500 WHICH IS LESS THAN ONE PERCENT. SO, YOU KNOW, I GUESS I HAVE A REAL PROBLEM WHEN EVERYBODY IS TELLING ME I HAVE A CONFLICT AND YET I AM WORKING ONE THOUSAND HOURS RIGHT NOW DOING YOUR WORK FOR YOU. THAT PUTS KNEE A BAD PLACE AS A PROFESSIONAL, AND -- PUTS ME IN A BAD PLACE AS A PROFESSIONAL AND I WISH THAT COULD STOP, IF NOTHING ELSE. AND ALSO, I REALLY -- IF THIS ISSUE ABOUT ME TAKING OVER VERN'S POSITION AND THIS KIND OF THING IS MAKING EVERYTHING SO DIFFICULT JUST TO COMMUNICATE AND GET YOUR WORK DONE FOR YOU, I JUST SEE IT GO AWAY SO WE CAN GO AHEAD AND DO YOUR WORK FOR YOU AND GET DONE WHAT WE WANT TO GET DONE INSTEAD OF HAVING THIS RAISED EVERY TIME THAT I HAVE THIS TERRIBLE CONFLICT. I AM NOT COMFORTABLE WITH THAT AND I DON'T THINK ANY OF YOU SHOULD BE.

COMMISSIONER PLATT:

I THINK THE AUDITOR IS RECOMMENDING VERNON. NOT THAT YOU TAKE OVER THE LEGAL DEPARTMENT OF THE E.P.C.. THAT'S WHAT WE ARE

TALKING ABOUT TODAY IS THE AUDIT. MR. CHILLURA.

COMMISSIONER CHILLURA: MADAM CHAIRMAN, I HAVE TO LEAVE AND I KNOW THIS IS AN IMPORTANT ITEM.

COMMISSIONER TURANCHIK: THEN YOU BETTER CONTINUE IT.

COMMISSIONER CHILLURA: I WOULD LIKE -- IN LIGHT OF WHAT EMMY HAS SAID AND I HAVE TALKED TO HER ABOUT THIS CONFLICT QUESTION, AND I AM CONVINCED THAT AFTER TALKING TO HER THAT THE CONFLICT ISSUE NEEDS TO BE PUT TO REST. THE RELATIONSHIP THAT WE HAVE NOW WITH THE COUNTY'S LEGAL DEPARTMENT COULD CONTINUE BECAUSE WE SORT OF USE THEM AS OUTSIDE COUNSEL FROM TIME TO TIME. I SUPPOSE STRUCTURALLY, THAT'S THE WAY IT IS DESCRIBED. I DON'T KNOW WHY WE CAN'T FUNCTION THE WAY WE HAVE BEEN FUNCTIONING, AND WE USE THE COUNTY'S LEGAL DEPARTMENT FOR OVERFLOW AND SPECIAL CASES LIKE WE HAVE BEEN. THAT WOULD ALLOW US TO FUNCTION AT ESSENTIALLY THE SAME LEVEL OF FUNDING THAT WE HAVE NOW, AND YOU KNOW, WE DON'T HAVE THIS BUILT-IN -- THIS HAS A TENDENCY TO BUILD AN ANIMOSITY BETWEEN YOUR LEGAL DEPARTMENT, SARA, AND EMMY'S LEGAL DEPARTMENT. I DON'T THINK WE WANT TO DO THAT. I AM CONVINCED THAT THE CONFLICT ISSUE IS NOT A CONFLICT. AFTER TALKING TO EMMY AT LENGTH. SO PERHAPS, IN SPITE OF THE FACT THAT I WANTED -- RUSS, DON'T LEAVE YET, YOU MAY BE INVOLVED IN THIS. DESPITE OF THE FACT I WANTED TO GET AN ANSWER ON THIS TODAY, WE MAY WANT TO GET SOME ADDITIONAL INPUT. AND I'VE GOT TO LEAVE. YOU CALL VOTE ON THIS IF YOU WANT NOW.

COMMISSIONER TURANCHIK: I THINK THIS IS AN IMPORTANT ISSUE. I DON'T WANT TO MAKE SHORT SHIFT OF THIS.

COMMISSIONER CHILLURA: I WOULD RATHER DEFER THIS UNTIL NEXT MEETING.

COMMISSIONER TURANCHIK: SECOND.

COMMISSIONER CHILLURA: -- WHERE WE WILL HAVE ADDITIONAL TIME AND MAYBE AT THAT TIME C.E.A.C. COMMITTEE CAN TAKE A LOOK AT IT AND GIVE THEIR TWO CENTS WORTH BECAUSE RUSS IS AN ATTORNEY AND I DON'T KNOW HOW MANY ATTORNEYS ARE ON THAT BOARD. FORTUNATELY NONE, RIGHT. MAYBE THEY CAN LOOK AT IT SO THAT WOULD BE MY MOTION.

COMMISSIONER PLATT: THERE IS A MOTION TO DEFER. IS THERE A SECOND?

COMMISSIONER BERGER: MADAM CHAIRMAN, I WOULD PREFER WE NOT DEFER THIS BECAUSE I WILL NOT BE AT THE NEXT E.P.C. MEETING AND I WOULD LIKE TO BE INVOLVED IN IT.

COMMISSIONER CHILLURA: I AM NOT GOING TO BE THAT THE ONE. TIT FOR TAAT.

COMMISSIONER PLATT: WANT TO DISCUSS THIS --.

COMMISSIONER TURANCHIK: TAKE THIS AT A REGULAR BOARD MEETING. RESOLVE THIS ISSUE AT SOME TIME WHEN WE HAVE A FULL BOARD.

COMMISSIONER BERGER: AT A BOCC MEETING.

COMMISSIONER TURANCHIK: FIRST ONE AND THIRD ONE.

COMMISSIONER PLATT: I CAN SAY EMMY I DO BELIEVE THERE WAS A CONFLICT AND I SAT ON THIS BOARD WHEN THERE WAS A CONFLICT BETWEEN THE COUNTY ATTORNEY AND THE LEGAL WORK OF THIS BOARD. I CAN TELL YOU THAT.

COMMISSIONER TURANCHIK: CAN I SAY SOMETHING AS A PRACTICING LAWYER, THIS TALK ABOUT CONFLICT IS HOGWASH. HOGWASH. UNDER THE RULES OF PROFESSIONAL RESPONSIBILITY, IF THERE'S A CONFLICT, THE ATTORNEY IS OBLIGATED TO ADVISE THEIR CLIENT OF IT AND SEEK A WAIVER OF THE CONFLICT. IT IS NOT A MATTER OF CHOICE; IT IS A MATTER OF PROFESSIONAL RESPONSIBILITY THAT IF YOU VIOLATE IT, YOU CAN BE DISCIPLINED AND DISBARED. SO, LET'S DEBUNK THIS ISSUE PUBLICLY. ANY LAWYER HAS GOT TO AVOID AN ACTUAL CONFLICT FOR AN APPEARANCE OF CONFLICT FOR FACE A DISCIPLINARY PROCEEDING. NOW, I THINK THAT'S THE BOTTOM LINE. AND IF -- IF ANY BOARD MEMBER THINKS ANY OUR LAWYERS WON'T DO THAT, THEN WE SHOULD FIRE THEM OR YOU SHOULD MAKE A MOTION TO FIRE THEM BECAUSE IT'S THEIR OBLIGATION.

COMMISSIONER CHILLURA: DOES THAT APPLY TO BOARD MEMBERS, TOO?

COMMISSIONER TURANCHIK: NO, SIR. [LAUGHTER] BUT THAT'S MY POINT. IT IS ethics -- ETHICS OF A LAWYER TO PREVENT A CONFLICT AND IF ANY BOARD MEMBER THINKS THAT MS. Fotopulos, VERNON, EMMY, JIM WILL NOT DO THAT, THEN WE SHOULD NOT HAVE THEM ON OUR STAFF. I DON'T LIKE THE NOTION OF PEOPLE

RUNNING AROUND TALKING ABOUT CONFLICTS THAT. LAWYERS CAN'T DO THAT. IT IS A FUNDAMENTAL ISSUE OUT THERE AND I REALLY HAVE A BIG PROBLEM WITH IT. I THINK ANY PUBLIC SERVANT WHO IS ELECTED SUGGESTS THAT IS DOING DISSERVICE TO OUR PROFESSIONAL STAFF.

COMMISSIONER PLATT:

COMMISSIONERS, LET ME SAY THAT ATTORNEYS COME AND THEY GO. EMMY HAPPENS TO BE HERE TODAY. THERE'S NO GUARANTEE EMMY IS GOING TO BE HERE TOMORROW OR THE NEXT DAY AND I CAN TELL YOU THAT I SAT ON THE BOARD WHEN THE ATTORNEY FOR THE E.P.C. WAS ALSO THE ATTORNEY UNDER THE COUNTY ATTORNEY FOR THE UTILITIES AT A TIME WHEN THE UTILITIES WERE ONE OF THE MAJOR POLLUTERS IN THIS COUNTY. NOW, TELL ME IF THAT'S A CONFLICT. NOW, THAT WAS A DIFFERENT COUNTY ATTORNEY AND THERE WAS A DIFFERENT -- THERE WAS NO ATTORNEY FOR HERE. COUNTY ATTORNEYS COME AND GO. BOARDS COME AND GO. I HAVE NEVER SEEN ANY OF THOSE ATTORNEYS BACK IN THAT DAY EVER DISCIPLINED ABOUT ANYTHING.

COMMISSIONER BERGER:

BUT YOU STILL HAVE THE ETHICS. YOU STILL HAVE -- IT DOESN'T CHANGE. DOESN'T MATTER WHO --.

COMMISSIONER CHILLURA:

MY MOTION WOULD TO BE DEFER IT TO THE NEXT BOARD MEETING.

COMMISSIONER PLATT:

IS THERE A SECOND.

COMMISSIONER TURANCHIK:

YES.

COMMISSIONER CHILLURA:

AT THE NEXT BOCC MEETING WE RECONVENE AS E.P.C.. I DON'T KNOW IF THEY CAN LOOK AT IT THEN. MA I WANT TO HAVE A SPECIAL MEETING, RUSS. YOU CAN TELL ME WHAT YOUR OPINION IT.

COMMISSIONER PLATT:

WOULD YOU VOTE ABOUT CONTINUING IT?

RECORDING SECRETARY:

MOTION CARRIES 6 TO 0.

[I:\EPC Legal issue 3-20-97]

COMMISSION

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JOE CHILLURA
CHRIS HART
JIM NORMAN
JAN PLATT
THOMAS SCOTT
ED TURANCHIK

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MEMORANDUM

TO: The EPC and BOCC

FROM: Sara M. Fotopulos, Chief Counsel, EPC

DATE: March 24, 1997

RE: The EPC Audit Legal Issue - EPC Meeting of March 20, 1997

Ladies and Gentlemen:

When I read the newspapers on Friday and over the weekend, I thought I was reading about people and events on some distant planet. How on earth did we reach this point? How and when did this issue, as Emmy stated on Thursday, go "swirling out of control"? And how do we get the issue back into the arena of "fair public debate" where it truly belongs.

Emmy's task in serving the citizens of this county as county attorney is an extremely difficult one. The multitude of events, complex circumstances and interests countywide make keeping track of each factual detail practically impossible. I do not doubt that Emmy has been trying hard to do what she believes to be the right thing and the best thing for this county, based on the facts as she perceives them to be. I may disagree with her on the issues pertaining to EPC, but only because I see the facts differently.

The public policy issue before the Commission at Thursday's EPC meeting was the auditor's recommendation that EPC's assistant attorney be transferred from my staff to the county attorney's staff. The issue turned on the answers to certain questions: Is the perceived conflict of interest between the BOCC and EPC on environmental issues simply a matter of public misperception without substance? Has the county attorney in fact become more involved in representing EPC in recent years? Did the county attorney in fact spend "over 1000 hours" representing EPC in environmental cases last year? Did the county attorney's office in fact represent EPC in the "pig farm" case? Does it in fact represent EPC in the Martin Brothers case? Does it in fact represent EPC in the current policy debate over minimum flows and levels? Would the county save "at least seventy thousand dollars" by transferring the EPC's assistant attorney to the county attorney's staff?



Emmy has answered “yes” to all seven of these questions, and bases her recommendation to you on the facts as she sees them. I have answered “no” to these same questions, and have based my recommendation to you on the facts as I understand them to be. It would appear that, before making a reasoned public policy decision on this issue, you will first have to determine which set of answers you believe to be more accurate.

As I see the relevant facts:

- Professional ethical obligations do require withdrawal when conflict exists, and with appropriate procedures to handle such concerns, no problems should occur. I agree that circumstances of actual conflict in litigation matters between the county attorney’s office and mine are seldom. But they are not non-existent; people do make mistakes; there is substance. It was not too many months ago that the county attorney felt, in representing the best interests of the county, that she needed to threaten litigation against EPC if it did not relinquish wetland jurisdiction over the Dibbs property. However, the fact which particularly concerns me is the public’s perception. The appearance of conflict is very real; it was one of the primary reasons the Commission separated my position from the county attorney’s office in the first place. The appearance of conflict is an underlying basis for the public’s general distrust of government. As an entity, EPC has enough difficulty maintaining its separation from the county because of the makeup of its governing body.
- Although the county has over the years become more involved in environmental issues for its own purposes, the county attorney’s office has not represented the EPC in a single environmental case in the last two years. The county attorney’s involvement in the “pig farm” case related to whether the county’s special use permit was required and appropriate, not the application of EPC’s odor rule. EPC pursued that issue on its own. The Commission asked that the county attorney’s office and mine work together to resolve the Martin Brothers case, and my office has arranged for the pending mediation where all parties will have an opportunity to represent their own clients’ separate concerns. And in the debate over minimum flows and levels, EPC’s interest is the development of technical and regulatory standards consistent with its rules and good public policy. Although it appears that our position is consistent with that of the county, as a litigant and advocate the county may take positions that differ from existing regulatory requirements, or from the positions of other parties to whom EPC provides technical assistance, such as the City of Tampa and SWFWMD. In these matters, EPC must remain independent.
- In the last year, the county attorney’s office did represent EPC in two personal injury cases resulting from a single motor vehicle accident: the *Baity/Johnson* cases. I doubt whether these cases could have resulted in “over 1000 hours” of legal work.

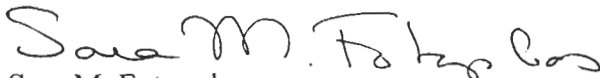
- The auditors concluded that “there would be little, if any, fiscal impact associated with reassigning the EPC’s assistant attorney” to the county attorney’s office. Their report does not reflect whether they considered the additional costs of hiring outside counsel when conflict cases do arise, or whether they considered the administrative costs of providing support and two offices for the assistant attorney, one at EPC and one with the county attorney.

To repeat, this is how the facts appear to me. If Emmy or someone else believes the facts to be otherwise, then perhaps a special committee, or a workshop allowing for public participation, could be scheduled to properly debate and determine them. The Commission should have well-founded facts before having to make public policy decisions.

Beyond addressing the issue presented at Thursday’s meeting, Emmy resurrected her original recommendation to eliminate EPC’s legal department altogether, including the position I presently hold, a recommendation which she apparently still believes to be in the best interests of the county. I disagree, but I am not comfortable presenting argument to you on this issue, given my vested interest in the outcome of the debate. I can only refer you to the conclusions reached and the recommendations made by both sets of independent auditors.

Beyond both of these issues, and by far more troublesome, is the manner in which these issues were addressed at Thursday’s meeting, a manner which evinced an apparent lack of “the 3 C’s” (communication, cooperation, and courtesy) between public servants seeking to serve the same public interest. As one of the persons responsible for maintaining the 3 C’s between the county and EPC, I will redouble my efforts and ask others to do the same. In this regard, it may be helpful to refer to Mr. Stewart’s recommendations provided to you in the agenda backup for last Thursday’s meeting.

Sincerely,



Sara M. Fotopulos

cc: Emeline C. Acton, Hillsborough County Attorney
Roger P. Stewart, Executive Director, EPC