

Should Laybourn have walked?

At a recent voucher meeting, Ward I councilman Pete Laybourn was reported to have walked out of the meeting, effectively ending the meeting because, without him, there was no quorum.

These vouchers meetings are unnecessary, a waste of time, and it is surprising that many do not lack a quorum.

Laybourn's arch-enemy, the daily newspaper, belatedly told a story five days after the incident. It took that long for the mayor to provide the paper with a tape recording of the meeting. But even with the lengthy delay, did they have it right?

The WT-E reporter was confused by the tape. She wrote, in her November 24, 2007 coverage of the meeting: "If that councilman declared a conflict of interest and left the dais for the vote, there would be only five members remaining -- not the majority needed to vote." The majority was required for a quorum, not for a vote.

In the WT-E story, the mayor, who was not present at the voucher meeting as he was supposed to be, asked the rhetorical question, "why should they (vendors) have to wait for their money?" Actually, having these unnecessarily frequent voucher approval meetings generally expedites payment. It does not slow up remittance from what is normal and what the same vendor could expect from the County or a non-public payor.

Councilmen who sell products or services to the City usually declare a conflict of interest and either divide the question or don't vote on any of the vouchers - which is shirking their responsibility.

In the WT-E coverage, acting city attorney Claudia Ryan Angelos, a family law attorney, opined: "By making the motion and asking that it be postponed, Brown is not gaining anything. As a matter of fact, he is probably harming himself." So?

Let's try to bring clarity to this matter.

First, it is almost always wrong for an elected official to arbitrarily leave a meeting at which he/she was in attendance and the leaving was out of pique. But, it is equally wrong for a city attorney to refuse to advise on a parliamentary matter by saying she would not refer to Robert's Rules of Order because she was rendering legal advice that might not be supported on those pages.

There were alternative means of handling such a meeting. Under City Code Section **2.04.120 Quorum**: "any number (member?) may adjourn to compel the attendance of and punish absent members." Jack Spiker had told the chair of this voucher meeting, Don Pierson, that he *could* attend and he should have been called. Other than Jack, could have Mark Rinne, Jimmy Valdez or Patrick Collins been contacted and compelled to attend?

Contrary to Ms. Angelos' ignorance, Robert's Rules of Order do govern these meetings. City Code (**2.01.140**) is very specific and must be followed.

"Except as controlled by Wyoming Statute, or modified by ordinance duly enacted by the governing body, the 10th Edition of Robert's Rules of Order, newly revised, published by Perseus Publishing, shall govern the proceedings and deliberations of the governing body and its committees."

Ms. Angelos advised that a member who had declared a conflict of interest could, in the same meeting and on the same subject, make a motion to postpone.

She has sat through city council meetings when the mayor or council members have declared conflicts of interest. They not only do not participate in the debate or vote on the subject of the conflict, they leave the dais. Obviously, if Jim Brown declared the conflict of interest indicated in this tape recording of the voucher meeting, he should not have been present to discuss postponement, let alone offer a motion. But he didn't need to. Leave.

This is not the first time that Mr. Brown has made a motion that was acted on by the governing body in contradiction to his conflict. In another recent instance, he seconded a motion, then later declared a conflict of interest about the subject of that motion and then did not vote on a motion he had seconded. Not a binding vote.

It is also not the first time that the subject of a conflict of interest has infiltrated voucher meetings and that a member has vacated the chambers after declaring such a conflict on an amount due their business concern. It is frequent.

As you read the transcript of the November 19th voucher meeting at the right, it becomes obvious that this disagreement was easily solvable. But, to remain consistent with a practice followed by the governing body, the best solution would have been to bring a missing member to the meeting. If there is any blame for vendors not getting the money they were expecting, it has to be equally shared by those absent - not just Pete Laybourn for demanding that his question about whether one declaring a conflict of interest could then make a motion on the very subject he had declared the conflict.

Pierson and Angelos were trying to avoid the absence of Jim Brown but that was unnecessary. Had the question been divided as it is almost every voucher meeting, they could have voted on approving all vouchers except his and he could have left the meeting due to a conflict - **AFTER** all other vouchers had been approved. The routine they've always used has been to approve the member's voucher while he is absent the meeting, then bring him back to approve all other vouchers. If they had done as suggested here, when Brown left the room, the quorum would have been lost and the meeting adjourned. The only order of business remaining undone at that point would have been Jim's voucher, which would have come up in the next meeting as unfinished business.

Ms. Angelos' obfuscation caused the standoff, not Pete's intransigence.

Approval of the vouchers for payment had been moved and seconded before the audio tape provided to the Cheyenne Herald began. Evidently, Jim Brown (as owner of a business having money coming from the City, had already declared a conflict of interest). Then, the meeting went like this: (Editor's note: A full tape was later acquired - added transcript is on p. 8.)

Pierson: Mr. Brown, to remove your voucher, we have a, we can do that without any problem. And we can take a vote on that. Would you possibly agree to amending your conflict and add language that that voucher be voted on at the next meeting of the general ... of the council?

Brown: I wouldn't have a problem with that. I assume that would automatically take place if we didn't have a quorum to ... (Editor's note: This meeting was conducted without the chair recognizing members and with the chair and members talking over each other.)

Pierson: Without your vote, we don't have a quorum to continue to take a motion to postpone it.

Brown: Oh.

Pierson: So if your motion contains voting on it at the next meeting, it'll all be done in one motion.

Brown: Certainly, Mr. President, I would move ...

Pierson: Is that okay with the second?

Segrave: Absolutely.

Pierson: Very good. We have a motion on the floor ...

Laybourn: Mr. Chairman.

Pierson: Mr. Laybourn.

Laybourn: As a point of procedure, am I understanding correctly that Mr. Brown is declaring a conflict of interest on this matter *and* making a motion on it?

Pierson: No.

Laybourn: He's making a motion to postpone, is he not?

Pierson: He's declaring a conflict of interest and asking that his item be voted on at the next meeting of the governing body.

Laybourn: Is that not a postponement?

Pierson: In a way, I suppose it is. He's asking for it to be voted on at a different time than today.

Laybourn: Well, Mr. Chairman, I'd like to point out that we have procedures here and my question is, to the city attorney, who I believe is our parliamentarian, or the acting city attorney, can a member, maybe she can refer to Robert's Rules of Order and enlighten me if I'm incorrect, can a member make a ... declare a conflict of interest and make a motion in the same ... I don't know if you'd call a conflict of interest a motion, but a postponement certainly is. You have a combined action here and I would like to know how that is procedurally perceived in Robert's Rules of Order and our procedures here on the Council.

Angelos: Mr. Chairmen, through you. I'm sorry, Mr. Laybourn, I do not have my Robert's Rules of Order right in front of me but what I can tell you is that ...

Case: The book is right there. (Note: A copy of Robert's Rules were right in front of Ms. Angelos.)

Angelos: I don't choose to look at it right now. What I can tell you is this. That when there is a conflict of interest, there's a perception that someone is gaining something from their action. By making a motion and asking that it be postponed, he is not gaining anything. As a matter of fact, he is probably harming himself. I do not believe that this particular matter that you're referring to is specifically addressed in Robert's. That's why I choose to not go to Robert's but I can tell you that what he is doing is appropriate.

Laybourn: Mr. Chairman?

Pierson: Mr. Laybourn.

Laybourn: I'd like to note on the record my concern about this procedure. This is a fascinating question when a member of the body asks a question about procedure and the attorney chooses not to refer to the governing document that make this up ... and I'm very concerned about this entire procedure and about the manner in which this matter is being conducted. And because of that, I'm leaving, which, I believe, does deny you a quorum. But this is no way to conduct business and I'm certainly not going to participate in such an action when I cannot get answers to my specific procedural questions.

Pierson: Mr. Laybourn. You are leaving the meeting - is that what you're telling me?

Laybourn: I'm telling you that I'm not participating in this meeting due to the nature of the procedure that you are implementing and the refusal of the city attorney to answer my question about the procedure we are following ...

Pierson: Mr. Laybourn, your question was answered by the attorney and I would advise you that you should not leave this meeting.

Laybourn: Mr. Chairman, I would advise *you* that my question specifically was not answered by the city attorney. I asked her to refer to the governing document, Robert's Rules of Order. She chose not to and made another opinion. I don't believe that this is proper procedure. I'm very concerned about this conflict of interest issue and about this procedure and I don't believe that it is appropriate for me to participate further considering this situation. But, I do understand what you're saying, Mr. Chairman, and I believe that ... I understand *your* concern but right from the very beginning here, I'm sitting over here at the end of the dais and a private conversation is evidently occurring at the other end about the procedure here. I have no idea what's occurring. I asked about it. I get no answer.

Pierson: Mr. Laybourn, you did get an answer.

Laybourn: Those answers satisfy *you*, Mr. Chairman, but you're not voting, I'm voting. They don't satisfy me. Is that clear?

Pierson: Is it clear that you're leaving this meeting? Is that what you're telling me?

Laybourn: I've told you three times.

Pierson: Very good. Bye.

Case: Mr. Chairman. Maybe I could help Mr. Laybourn clear this out in his mind ...

Pierson: 2, 3, 4, 5. Meeting is over with. Mr. Laybourn has left the meeting. We do not have a quorum. The vouchers will have to be carried over to the next meeting. Adjourned.

Skywalk ...

The drawing of a proposed skywalk running from the parking garage down the alley between the Hynds Building and buildings like Phoenix Books & Music and ending at Capitol Avenue shows a width of 12' between the walls of the buildings - the alley's total width.

At the height of a little less than 11', the skywalk extends into the alley more than 5' at the bottom and 6' or so at the top, which is about 23' from the ground.

This block long alley, one would think, should be accessible to ladder fire trucks and trash pickup vehicles. The maneuverability of a ladder truck would be greatly restricted with an alley opening of less than 7' the full length at 11' height.

If manned trash compactor trucks continue to be used, workers can roll the dumpsters out from under the overhang of the skywalk and load into the back of the compactor. If the City ever wants to convert to an automated system, such as the one used by Torrington, the trash container is dragged next to the truck, then up until it can be tipped. A 7' wide opening will not be sufficient and the intricacies of tipping such containers is almost certain to damage the skywalk or break the windows.

Speaking of windows -- will windows even be allowed?

Section 3104.5 Fire barriers between pedestrian walkways and buildings. Walkways shall be separated from the interior of the building by fire barrier walls with a fire-resistance rating of not less than 2 hours. This protection shall extend vertically from a point 10 feet (3048 mm) above the walkway roof surface or the connected building roof line, which is lower, down to a point 10 feet (3048 mm) below the walkway and horizontally 10 feet (3048 mm) from each side of the pedestrian walkway. Openings with the 10-foot (3048 mm) horizontal extension of the protected wall beyond the walkway shall be equipped with services providing a 3/4-hour fire protection rating in accordance with Section 715." Aarghhhh!

This means that pedestrians cannot be simply dumped into the parking garage - that the area within the structure has to have the protection stated at the end of the above paragraph.

If the plan is to construct a 5' 3 1/8" wide skywalk and the doors from the connecting buildings open into the skywalk, that would be a violation of **3104.8**, which states: "The unobstructed width of pedestrian walkways shall not be less than 36 inches (914 mm)."

If such a door was fully open, it could block the opening from an emergency exit.

If the skywalk were fully sprinkled, which could be required, the maximum expanse without exit is still only 250'. And none of the exit openings is shown to be to a public street - all empty into a private building, the Hynds, the Marriott, Wyoming Home, or the Idelman.

When will the skywalk be open and what is the plan to give only certain people access to it - in other words, employees of the adjacent properties, guests of the hotels, or customers?

Just as the parking garage itself has become a magnet for transients, this enclosed skywalk, presumably heated, lighted and dry, will provide an unexpected attraction for those homeless or aimless.

It has been said that the downtown is filthy because those assigned to clean it up are too busy cleaning up unspeakable items, waste and trash from the parking garage.

Section 3104.11 deals with ventilation: "Smoke and heat vents shall be provided for enclosed walkways and tunneled walkways ..." These vents, if on the top of the skywalk, could provide the escape for flames to reach the adjacent properties. If on the outer side, they could provide the escape to reach buildings to the north of the skywalk, like the Pioneer Hotel and Phoenix Books, etc.

Who will determine which of the 2003 International Building Codes must be complied with? City employees, of course. The same employees who decided that Mary's Bake Shoppe property had to be demolished without her knowledge, consent or right of appeal.

This is a foolish project which will benefit few people or downtown property owners. One property to benefit breached a previous agreement to lease spaces in the parking garage and another is not open and would be new to town. There are businesses that could benefit from similar unfair treatment and they've been downtown for a long time.

The Rosemary Woods missing segment of the November 19, 2007 vouchers meeting has been transcribed below. The proceeding following what appears below is on page 7.)

((Pledge of allegiance.))

Intlekofer: Approval of vouchers.

Segrave: So moved.

Brown: Seconded.

Laybourn: Mr. Chairman.

Pierson: Moved and seconded, Mr. Laybourn.

Laybourn: I observed quite a discussion going on at the other end of the dais here, about what we were doing. Could I have an explanation as to what conclusion was reached in your discussion with the Clerk and the Attorney?

Pierson: We were discussing - uh - Mr. -uh- Brown declaring a conflict and whether we would have a quorum to continue so -- that's what we discussed and once we get to moving here, I think you will see the action.

Laybourn: Well, I'm interested in the advice you received from the City Attorney.

Pierson: I didn't receive any advice from her - it was a discussion.

Laybourn: So is it your interpretation, Mr. Chairman, that we have a quorum to conduct business including Mr. Brown's voucher?

Pierson: We do at this time. Right now we do. We are waiting for any further motions. Did receive a motion for the vouchers and a second.

Brown: Mr. President.

Pierson: Mr. Brown.

Brown: I move to divide the question.

Segrave: Second.

Brown: By removing the Ameritech vouchers, page 1?

Pierson: So moved and seconded. Uh-hh - Mr. Brown, to remove your voucher, we have a, we can do that without (Note: Pick up the meeting's transcript on page 7.)

An incomplete tape was first provided to those requesting a complete tape. Only after further demand was a complete tape of the voucher meeting produced.

Water test results

About six weeks ago, a resident called about the water coming through his faucets after a water main break on the near eastside of the city.

The first complaint was that neighbors were not told in advance of the water being shut off so they could collect any amount of water for use until pipes were operational again. He had seen water department personnel shutting off the valve right in front of his house so he knew and took care of his own needs.

By the next morning, he had collected two samples of discolored water and offered them to me for viewing. I arranged to take samples of each - one a brownish color and the other with black shavings in it.

I spoke with BOPU about the basic issue of notice and we resolved how they do notify neighbors - either by going door-to-door or leaving notes on the door of someone gone or asleep if the hour is late. The notice gives an estimate of when the water will be back on and residents can decide how they want to handle the shut-off. And, while the sampling came in a manner different than they would have done it, they agreed to send the samples I had to be tested. They later informed me that they unable to conduct biological

analyses on the samples because of the containers used to hold the water.

The BOPU pointed out in their letter to me that they encourage people who have concerns about the contents of their public drinking water supply to have it tested. The water should be appropriately collected and labeled so the BOPU should be contacted to accomplish that.

While the specific levels of contaminants in the samples may not mean anything to readers, it is important to remember that, after an incident such as this one wherein the water is shut off, homeowners should flush their water lines and water heaters when water is flowing normally again.

The brownish color came from elevated levels of iron and manganese which may affect taste, odor, or color but at levels such as these for brief durations, are not harmful when consumed. The black color likely came from the residue in the homeowners hot water heater. It cleared as hot water was run into the tub the following morning. Showering in that same water may not have been as noticeable but the discoloration was present.

If in doubt regarding the taste, odor or color of your water, contact the BOPU.

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