

SPECIAL CITY COUNCIL MEETING

Monday, August 17, 1970.

VERBATIM

Mayor Johnston: I would like to say initially that I am sorry you people on the Planning Commission and you people who are here for that meeting had to delay your meeting and I appreciate your patience and understanding.

We are now in order and this special meeting will be limited to the five resolutions that have to do with the Recall Election. It is to comply with terms of the Writ of Mandamus issued by the Superior Court of the State of Washington on August 13, 1970, wherein the Council is commanded either to fix the date of said election, or in the alternative to appear before the Court to show cause why the Council has not done so.

Mrs. Melton, will you read the first resolution, please.

Mrs. Melton: Resolution No. 20859

Submitting to the electorate of the City of Tacoma at a special election to be held on Tuesday, Sept. 15, 1970 a proposition providing for the recall or retention of BECKY BANFIELD as a Councilman of the City of Tacoma.

Mayor Johnston: I move its adoption.

Mr. Cvitanich: I would ask that this all be verbatim by the clerk's office.

Mayor Johnston: You understand, Mrs. Melton?

Mrs. Melton: Yes, I do.

Mayor Johnston: The motion has been seconded by Dr. Herrmann. Call the roll, please.

Mrs. Melton:	Mrs. Banfield:	I abstain.
	Mr. Cvitanich:	On advice of counsel, I abstain.
	Mr. Dean:	On advice of counsel, I abstain.
	Mr. Finnigan:	Aye.
	Dr. Herrmann:	Aye.
	Mr. Jarstad:	Aye.
	Mr. O'Leary:	On advice of counsel, I abstain.
	Mr. Zatkovich:	Abstain.
	Mayor Johnston:	Aye.

Mayor Johnston: The resolution fails.

May we move on to the second resolution, please.

Mrs. Melton: Resolution No. 20860

Submitting to the electorate of the City of Tacoma at a special election to be held on Tuesday, Sept. 15, 1970 a proposition providing for the recall or retention of GEORGE CVITANICH as a Councilman of the City of Tacoma.

Mayor Johnston: Move its adoption.

Dr. Herrmann: Second.

Mayor Johnston: Call the roll, please.

- Mrs. Melton: Mr. Cvitanich: On the advice of counsel, I abstain.
- Mr. Dean: For the previously mentioned reasons and on the advice of counsel, I abstain.
- Mr. Finnigan: Aye.
- Dr. Herrmann: Aye.
- Mr. Jarstad: Aye.
- Mr. O'Leary: On the advice of counsel, I abstain.
- Mr. Zatkovich: Abstain.
- Mrs. Banfield: Abstain.
- Mayor Johnston: Aye.

The resolution fails 5 to 4.

Mayor Johnston: May we have the next resolution, please.

Mrs. Melton: Resolution No. 20861

Submitting to the electorate of the City of Tacoma at a special election to be held on Tuesday Sept. 15, 1970 a proposition providing for the recall or retention of FRED DEAN as a Councilman of the City of Tacoma.

Mayor Johnston: I move its adoption.

Dr. Herrmann: I second the motion.

Mayor Johnston: Call the roll, please.

- Mrs. Melton: Mr. Dean: For previously mentioned reasons and on the advice of counsel, I abstain.
- Mr. Finnigan: Aye.
- Dr. Herrmann: Aye.
- Mr. Jarstad: Aye.
- Mr. O'Leary: On advice of counsel, I abstain.
- Mr. Zatkovich: Abstain.
- Mrs. Banfield: I abstain.
- Mr. Cvitanich: On advice of counsel, I abstain.
- Mayor Johnston: Aye.

Mayor Johnston: The resolution fails, 5 to 4.

Mayor Johnston: Next resolution, please.

Mrs. Melton: Resolution No. 20862

Submitting to the electorate of the City of Tacoma at a special election to be held on Tuesday Sept. 15, 1970 a proposition providing for the recall or retention of JOHN E. O'LEARY as a Councilman of the City of Tacoma.

Mayor Johnston: Move its adoption.

Dr. Herrmann: Second.

Mr. O'Leary: Mr. Hamilton, at last Tuesday's meeting, I asked if you could get a legal opinion by the State Attorney's office. For the record, this morning you turned over to me some letters received, I would imagine, from the State Attorney's office, stating that they advised you that it is contrary to a long-standing policy for this office to intercede in a purely local matter. I think there are three letters in total. Do I understand clearly that this comes from the State Attorney's office?

Mr. Hamilton: That is correct, Mr. O'Leary. I have also written to the Council, and do not know if it has been distributed or not, but is in the office, a letter to the Council setting forth my conversation with Mr. Austin of the Attorney General's office, and in that I alluded to the fact that he was to send sample letters of their policy in the past, and they came in subsequent to my memorandum to your office.

Mr. O'Leary: Now, my understanding is that we are dealing with a State law, and not a purely local matter. I wanted that part of the record. And I believe the recall law that we are talking about is a State law.

Mr. Hamilton: That is correct.

Mr. O'Leary: And that is why I wanted someone to get an opinion from the State Attorney's office--evidently a legislator cannot get it nor a city attorney. Is that what the outcome is?

Mr. Hamilton: That appears to be their policy, Mr. O'Leary. The letters indicate quite clearly that they will not issue opinions to city officials. That's been well known for a number of years. And apparently a local legislator made inquiry and was refused.

Mr. O'Leary. Thank you.

Mayor Johnston: Call the roll, please.

- Mrs. Melton: Mr. Finnigan: Aye.
 - Dr. Herrmann: Aye.
 - Mr. Jarstad: Aye.
 - Mr. O'Leary: On advice of counsel, I abstain.
 - Mr. Zatkovich: Abstain.
 - Mrs. Banfield: I abstain.
 - Mr. Cvitanich: On the advice of counsel, I abstain.
 - Mr. Dean: For the previously stated reasons, and on the advice of counsel, I abstain.
 - Mayor Johnston: Aye.
- It failed, 5 to 4.

Mayor Johnston: Failed 5 to 4. May we have the next resolution, please.

Mrs. Melton: Resolution No. 20863

Submitting to the electorate of the City of Tacoma at a special election to be held on Tuesday, Sept. 15, 1970 a proposition providing for the recall or retention of A. M. ZATKOVICH as a Councilman of the City of Tacoma.

Mayor Johnston: I move its adoption.

Dr. Herrmann: Second.

Mr. Zatkovich: Since this concerns me and, of course, the other four also concern me, I certainly do not have to have an attorney tell me there is a conflict of interest, because this I recognize myself. It not only pertains to me, but to the other people because they are charged with the same--shotgun charges, of course. It is amusing in a way. I received a Writ of Mandamus the other day, and we had a special midnight meeting and I received another writ this morning. This is an amended Writ of Mandamus. I don't know whether you people are aware of it--I don't believe the news media has announced it, at least not to my knowledge, but this is an amended writ in which it directs that the City Clerk will, of course, set the dates. Seems like somebody is really confused--running around looking for something and someone to go ahead with it. I recognize that the final determination will probably be done by the court anyway. So I just merely want it to be brought out--I don't care who--some secretary or some typist or someone else--just as long as it isn't me--is going to set the dates. That's fine, That's all I have to say.

Mr. Cvitanich: If I may, sir, I take a little different approach than my colleague on the left; I do care, quite frankly, and there is more involved here than a simple recall--we are talking about a matter of principle. And I take exception to the attitude that "I don't care" because as one member of the five being recalled, I do care very, very much. It is not so much for the office, but the principle involved. So I did want the record to indicate that.

Mayor Johnston: Mr. Finnigan.

Mr. Finnigan: This writ that was handed to us today, and amended the other writ, states that the respondent, Josephine Melton, City Clerk, is hereby commanded to fix the date of a special election "between the dates of September 11, 1970, and September 21, 1970", and it is signed by a superior court judge. I would like to ask Mr. Hamilton what strength that writ has, and causes the City Clerk to set the date, or not?

Mr. Hamilton: Mr. Mayor and members of the Council, I think if you will---you will see that this also is an amended Writ of Mandamus, which in effect requires the City Clerk to set the date or to appear in court tomorrow afternoon at 1:30 and show cause why she should not be compelled to do so.

Mr. Finnigan: Mr. Hamilton, does that mean that she has to do it, or if you are in court, as you say, then if she refuses to do it, then the court is in a position to make some other decision--is that correct?

117

- Mr. Hamilton: That is correct. And we have advised the City Clerk that in our judgment, if there is sufficient question as to whether or not she has authority as a City Clerk to call a special election without the concurrence of the Council, we have advised her not to make such a call, but rather to take the matter into the courts.
- Mr. Finnigan: And you disagree with the superior court judge's command, is that correct?
- Mr. Hamilton: Well, as I indicated, an alternate Writ of Mandamus is made upon the next-party application, where one person goes in and alleges that he has a wrong, which he seeks redress upon and the court at that time, without hearing the merits of the cause or hearing the other side, will command somebody to appear to do the act or if they don't feel they should do it, they appear in court to show cause why it shouldn't be done. And at that time, the court will hear both sides of the situation and decide the matter on the merits.
- Mr. Finnigan: Then the way I read it, the City Clerk is an added respondent to the nine Council members. What is the position of the Council members appearing in court tomorrow at 1:30 in the afternoon? Are we required to do so or not?
- Mr. Hamilton: No, you are not absolutely required to. We have entered a general appearance for the Council as an entity, but not for you individually. And I think we have discussed this with the individual members and your representatives. As I said, our office is appearing for the Council as a body, collectively. And if any of you have any personal or individual defense that you wish to assert, it is incumbent upon you to do that on your own.
- Mayor Johnston: Any further comment by the Council at this time?
May we have the roll call on Resolution No. 20863, please.
- Mrs. Melton: Dr. Herrmann: Aye.
Mr. Jarstad: Aye.
Mr. O'Leary: I abstain.
Mr. Zatkovich: Abstain.
Mrs. Banfield: I abstain.
Mr. Cvitanich: On the advice of counsel, I abstain.
Mr. Dean: For the previously mentioned reasons, and on the advice of counsel, I abstain.
- Mr. Finnigan: Aye.
Mayor Johnston: Aye.
- Fails 5 to 4.
- Mayor Johnston: Resolution failed. And with matters brought up before us at this special meeting, I declare it adjourned.
- Mr. Cvitanich: Can the Chair adjourn the meeting without a motion made and seconded?
- Mayor Johnston: I was trying to speed things up, but if you would like a motion---
- Mr. Finnigan: Looks like a motion to adjourn.
- Dr. Herrmann: Second. (Voice vote taken and carried)