



**NORTON CITY COUNCIL
SPECIAL COUNCIL MEETING
MONDAY, NOVEMBER 17, 2008**

Roll Call: Ken Braman
Brenda Hlas
Tom Jones
Dennis McGlone
Bill Mowery
Scott Pelot
Mike Zita

Also Present:
Mayor David Koontz
Rick Ryland
John Moss
Pete Kostoff
Karla Richards
Ann Campbell

The Special Council Meeting convened on Monday, November 17, 2008 at 6:30 PM, in Council Chambers of the Safety Administration Building. The meeting was called to order by Scott Pelot, President of Council, followed by the Pledge of Allegiance and a moment of silent prayer.

Committee of the Whole Discussion-Issue #26-2008

Mr. Pelot stated this meeting was called to order by Mr. McGlone, Mr. Jones and Mr. Mowery and asked them to open the discussions. Mr. Mowery stated this amounts to, in layman's terms, the vote of the people have spoken overwhelmingly and with this issue we don't want this as a Council to go any further than what the people's vote have put it at. Mr. Mowery stated with what the rules state and from what he understands that it's been unconstitutional, or whatever that's not the point. The point is that it is a point, but we have to follow the people's wishes because they have put us in office to do just that. It's sad when things have to be interpreted. What really were the intentions of it? The intentions were what the people voted on the issue in the last election and that speaks for itself. Mr. McGlone stated if something was unconstitutional, then the people would not have even voted on it. He wished that this had not gone this far. Mr. McGlone stated it's like Mr. Kostoff has stated that it has to go that route. Mr. McGlone stated this is something the people wanted and voted on, and we come back and tell them that we are going to use their money to fight it is not the right way to do this. Mr. McGlone stated this was the reason he felt this meeting tonight was important. Mr. Jones stated he goes along with Mr. Mowery and Mr. McGlone on this. Over eight hundred (800) voters, in all precincts and all wards passed the vote. One of the precincts was close and he would admit to that. Mr. Jones stated that Mr. Kostoff told us last Monday he is going ahead with it, but you cannot go forward with it until it is certified, which would be a week from next Monday, correct? Mr. Kostoff replied he believed it would be either November 25, 2008 or November 26, 2008. Mr. Jones stated with that in mind, he is not about to use the taxpayer's money to fight their vote. Mr. Jones stated that does not seem right, and maybe some of the other members on Council don't feel the way Mr. Mowery, Mr. McGlone and himself feel. That is why we called this meeting here tonight, Mr. Jones stated that Mr. Kostoff has indicated he would take it to court. Mr. Jones stated there have been other changes to the Charter approved by the voters, and questioned if Mr. Kostoff intended to take those to court? Mr. Jones stated that it appears to him that he is representing two (2) members of Council instead of Council as a whole by taking it to court. Mr. Jones stated to downsize Council from seven (7) members to five (5) the people voted in that direction and he would uphold their vote in that matter.

Just like Issue #45, he did not contest it; of course it was a bigger vote than this was by far. Unconstitutional? You keep saying that, and Mr. Jones that he questions that, he has checked on it, he has looked around on it and he just cannot see anything in that direction. With that in mind he would support whatever Mr. McGlone and Mr. Mowery feel necessary. Mr. Jones that he did not see any violation whatsoever, maybe he is wrong, you are an Attorney and he is not. Mr. Jones that the way he sees this Issue #26 stands as it was voted upon. Mr. Kostoff provided handouts of Ohio Revised Code Section 731.01 and 733.56, (see attached). Mr. Kostoff drew attention to Section 731.01 it relates to members of a legislative authority, second paragraph which states *“A resolution that changes the total number of members shall specify the method by which the change in number is to take effect, but no reduction in the number of members shall terminate the term of an incumbent.”* Mr. Kostoff responded to the comments made by Mr. Jones, and in particular Mr. McGlone and Mr. Mowery. There isn't anyone, who along with all of you, who has a great respect for the people's right to take an initiative more than he does. Mr. Kostoff stated he believes and there is case law in the US Supreme Court, which is the law of the land. In the case of the Citizens against rent control against Berkley in 1981, the US Supreme Court stated that the voters may no more violate the constitution by enacting an ballot measure than a legislative body may do so by enacting legislation. Under Article 2, Section 28 of the Ohio Constitution it states that the legislative body cannot enact retroactive legislation. Mr. Kostoff stated he thinks it is fair to analyze retroactively a law couldn't be passed by any of you that would be in contravention to the Ohio Constitution. It cannot be passed by the people of our community. Mr. Kostoff said as he has stated from day one, when we put this on the ballot, he thinks that the intention of the people would be honored. It will go to court and the court would say that the Council would be reduced from seven (7) to five (5) upon the terms of office of the two (2) positions. Mr. Kostoff stated the court would try and rationalize something that is constitutional and get to the will of the people. The mere fact that the people have “spoken” in fairness would be fair to say that a lot of them didn't spend a lot of time or attention looking at the constitutional questions. Mr. Kostoff stated obviously the people of this community and other communities have the right to impose an initiative measure. But as he explained to everyone that is an initiative by the people, not by the legislative branch or Law Director of this city to review your ordinances. The reason his name is at the bottom of your ordinances and resolutions is that he has to be able to say that the form, regardless of the public policy and whether it is good or bad or in the best interests of this community, but whether in fact it is constitutional. If not, you would not even need a Law Director. Mr. Kostoff stated Mr. Jones stated that his observation was that he is representing two (2) Council members, and obviously he respects Mr. Jones' opinion, however his responsibility is to represent the corporate entity called the City of Norton. Mr. Kostoff indicated he had explained to the Mayor that when he does file with the court there would obviously be a conflict and you would have to appoint a Special Counsel to represent the position that this should go into effect. Mr. Kostoff stated he believed this would be brief and could be done expeditiously and we would get a ruling from the court. Mr. Kostoff stated the ruling from the court would be just as he indicated, and the people's will to reduce Council would be affirmed, but the unconstitutional portion would be removed. Mr. Kostoff stated as Mr. Mowery had referenced earlier, obviously you have a recall provision that Mr. Jones is familiar with. That recall provision calls for twenty-five (25) percent of the signatures, in essence this provision if allowed to stand would be recalling people under a far lesser standard. Mr. Kostoff stated an initiative as he understands it only requires ten (10) percent, and would be violating your own Charter in terms of the fundamental make up.

Mr. Kostoff stated although Mr. Jones did ask him to resign, he still respects him because he is still an elected office holder of this community. Mr. Kostoff stated he has a duty as all of you have, and he believes that everyone wants to go home tonight, knowing that the proposed language of this initiative is constitutional. The mere fact that the people passed it does not give it constitutional validation, but we all have a duty to make sure that it is constitutional. Mr. Braman stated since he first enlisted in the Marines in 1955 at the age of 17, he vowed to uphold the constitution and things have not changed since then. Mr. Braman stated that fifty some years later he is still going to uphold the Constitution. We cannot ignore the consequences of not making sure the City of Norton and its residents are protected from constitutional violations, and probable law suits. We have, in the past few years been paying less for our liability insurance because of fewer lawsuits against our city than in years past. If someone else takes this to court we could be in big trouble again. Not only fines but probably higher insurance rates. If the residents want a five (5) member Council so be it, but our first duty as their representatives is to guarantee the legality of everything relating to the City of Norton. If this is found to be constitutional great, if not it will have to be corrected. Mr. Braman stated he wouldn't be part of a cover up, nor would he be swayed by threats from those who say he will never be elected again if he doesn't give in to their way of thinking. Mayor Koontz commented and stated that our Law Director has stated this is his legal opinion, not his political opinion or his personal opinion—that Issue 26 includes a clause that is unconstitutional, meaning it is in conflict with the law of the State of Ohio. This particular problem is that the ballot issue stated that the change is to take effect on January 1, 2009, rather than for the 2011 Council At Large election for a term to begin on January 1, 2012. This issue of compliance with State law cannot be taken lightly. Mayor Koontz stated in his Oath of Office he swore to uphold the laws not only of the City of Norton, but also the laws of the State of Ohio, and the United States of America. Perhaps it would be easier or cheaper to just look the other way and turn a blind eye to the issue, but if he did so he would be violating the promise he made with his oath. You may say its not illegal, it's the will of the people; but the fact is that the will of the people may not be 100% legal in this case. Mayor Koontz stated he does respect the will of the voters, he certainly did not disagree with them last year when they elected him. They elected him as Mayor so what does the Mayors position entail? It is not in the duties or jurisdiction of the Mayor or any Council member to render legal opinions, that is why we have a Law Director. Mayor Koontz stated he believes we have an excellent Law Director. He certainly is not going to ask him to resign. As Mayor he must heed the advice of the Law Director-that we have a duty to take this issue to a Judge to make a ruling on the legality of the date of implementation. Is this going to cost the city legal fees? Yes, it will, and that is unfortunate, but Mayor Koontz hoped the fees would not be too great. Mayor Koontz wished the proponents of Issue 26 had conferred with our Law Director or another attorney prior to obtaining the signatures, but this was not done, nor was it required. So, now we are facing a decision to either: 1) to ignore the potentially unconstitutional aspect of Issue 26 and allow its early implementation in 2009 or 2) challenge it and get the ruling from a Judge. Mayor Koontz stated he wants a Judge's ruling and he asked Council to consider their Oaths of Office as you discuss this issue. Mr. Zita commented about upholding the vote of the people and he hoped you are just as interested in upholding your Oaths of Office when you were sworn into your positions as city Council Members.

Mr. Pelot read the Oaths of Office that all members took when they took office, which reads: *“I, do solemnly swear to uphold the Constitution of the United States, the Laws of the State of Ohio, the Charter of the City of Norton, Summit County, Ohio, and that I will faithfully, honestly and impartially discharge my duties as a Council Member of the City of Norton, Ohio, during my continuance in said position”*. Mr. Pelot also read a section from Charter Section 9.01 which states: *“The electors of the Municipality shall have the power to propose ordinances and other measures by initiative petition in accordance with the provisions of the Constitution and laws of Ohio now or hereafter in effect.”* Mr. Pelot added that he fully agreed with Mayor Koontz’s comments, it’s a matter of finding out if its legal. Mr. Pelot stated we understand the voters voted to reduce Council and he is fine with that. However, to go retroactive, and as Mr. Kostoff has stated is unconstitutional. Mr. Pelot stated in order to figure it out and uphold the constitution and the will of the people, then this is what we need to do. Mr. McGlone stated what is said is true, and he believes in his Oath of Office and the Constitution, but his problem is why couldn’t we do this before it all happened and save us time, money and the headache? Mr. McGlone asked if we should have checked this in Ohio Revised Code or something before we put this on the ballot? Mr. Kostoff replied obviously if Council had proposed to place this on the ballot, he would have reviewed the ballot language and he would have advised Council that this portion would need to be changed. Mr. Kostoff stated once that was filed, it is in the purview of the Board of Elections, and Mr. Kostoff stated he does feel this is unfortunate, but it does not make it lawful. Mr. Kostoff stated he did not draft their legislation, nor did he review it, and if it’s proven to be unconstitutional then it’s worth your time and attention to make sure we are following the law. Mr. Jones stated it is correct that Mr. Kostoff did not prepare the legislation, however, the Board of Elections approved it, and it was approved by the Secretary of State to go on the ballot and the people voted on it. Mr. Kostoff agreed, but it was approved as to the form, and he had checked with the Board of Elections on this and it is not their job to determine the constitutionality of it. Their job is to see that there are sufficient number of signatures and that it gets placed on the ballot. Mr. Kostoff stated as he has read to all of you before, the highest law in the land says you as a Council body cannot pass a unconstitutional law, and the people cannot compel an unconstitutional law, wouldn’t you agree? Mr. Jones replied no, but he would agree with you not spending one dime on fighting the people’s vote because now you are taking the taxpayers money to fight their vote. Mr. Jones stated he personally would not allow that. Mayor Koontz stated it is not fighting the vote, it is clarifying the vote to ensure it is enacted in a constitutional manner. It is simply correcting a mistake in the ballot language that was unconstitutional. Mr. Kostoff is our Law Director for this city, not for two (2) people or three (3) or four (4). Mr. Pelot reminded everyone that Council did not have a choice on sending or not sending this to the Board of Elections. We have a sworn duty and obligation to do that and once again, here we sit with this same piece of legislation and sworn duty to uphold the constitution. Mrs. Hlas stated Mr. Jones seems to be concerned with the fact that we sent this to the Board of Elections and they voted on it. Mrs. Hlas stated as a Council if we knew it was unconstitutional and we refused to send it to the Board of Elections, what would have happened? Mr. Kostoff replied as he explained to Council before it is your ministerial duty and you are compelled by law to place it on the ballot. No opinion as to whether you personally supported it or not. Mr. Kostoff stated if you ignore that duty you would be subject to have the courts order it and if you resisted it you would be held in contempt. Sometimes being in contempt is not a nice thing, and the extremes are going to jail. Mr. Mowery stated he understands the position Mr. Kostoff needs to take as the city’s Law Director.

However, the people over a period of time, have seen the Constitution get twisted and manipulated to the point where things get hidden. The residents seem to take such a financial beating on things, they see recalls, the inner fighting and this is just a continuation of this. To spend time with Special Council meetings and put more stress on our residents, why can't the people involved with this in the positions, do what is right, it's common sense. If you feel as members of Council you should vote no to spend money on an injunction, then that should be carried through. Overwhelmingly that is what the people are going to do, if their vote and will is not inserted in this, they will go through a recall. There will be more problems and it will tear up our community with more legal issues like this. It will go to a recall, and those positions will be taken out the first of the year. They will have their way about this; there is no doubt about it because I have seen it. And when you are talking about the positions they are in, I just cannot back down from what the people's wishes are so overwhelmingly. Mr. Mowery stated if he was in the At Large position, he would take a hard look at what I am putting my city through for the next two (2) years. Mr. Zita stated we are not talking about a recall here, if so it would have been passed as such. The initiative petition that was circulated was circulated to reduce Council from seven (7) to five (5). If it were a recall petition, the number of signatures would have been increased. The numbers for an initiative was approximately 500 and for a recall petition it would have been approximately 1500. So if this were a recall petition they would have needed 3,000 signatures to remove two (2) members from Council. Therefore, the only thing we are looking at now is a Charter petition, not a recall petition. Mrs. Hlas stated if in fact they wanted to recall two (2) Council members, then that is what they should have done. We did not put the burden on the taxpayer by doing this. If it were a true recall petition, then that's what should have been done and we would not even be here discussing it this evening. Mr. Mowery stated he realizes this, but if you are going to push the residents up against a wall, and this is what its going to do, then you will get the results of a recall. Mr. Mowery stated he is in favor of whatever they go for because their backs have been against the wall for how many years now? Mr. Kostoff stated he believes the court would attempt to harmonize the will of the people and he respects that too. He believes the court would only remove the retroactivity portion and agree to the reduction of seven (7) to (5). This is not a recall it is an interpretation of this initiative and it has to be reconciled to the Constitution. Mr. Kostoff cited the examples of a referendum and sometimes people take the city to court and your actions are overturned. Mr. Kostoff stated more than anything else that we do, we have the responsibility to ensure that the laws adopted in this community are in a constitutional fashion. Mr. Kostoff stated he is not relishing the fact of looking into this issue or more work product that runs the clock. Mr. Kostoff stated again, the mere fact that a law is adopted does not mean its constitutional. Mr. Kostoff stated if we take the time to have a judicial determination, you will all know that the law was implemented in a constitutional fashion. Mr. Kostoff stated he understands Mr. Mowery's comments that the residents have been through a lot and feels that this needs to be challenged. Mr. Zita motioned expressing Council's concurrence in the Law Director's decision, under Ohio Revised Code, Section 733.56 to seek a judicial determination of the constitutionality of Issue 26, seconded by Mr. Braman. Mr. Pelot mentioned the comments made earlier about wasting the taxpayers money and he agreed this is a waste of taxpayers money. However, the individuals who circulated this petition could have pulled it back from the Board of Elections once they were informed that it was the opinion that our Law Director felt it was unconstitutional. Mr. Pelot stated we didn't have to be here tonight, it is not any of the Council's jobs that are in jeopardy. It's about upholding the constitution and our sworn duties.

If you want to be upset with somebody wasting our money, there is where you should look. Mr. McGlone stated this needs to be fought in court to see if it is constitutional or not and he does not like the way the money is being spent to do it. Mr. Jones called a point of order half way through the roll call at the point of calling on Mrs. Hlas. Mr. Jones referenced Roberts Rules and asked Mr. Kostoff if the two (2) individuals involved in this are allowed to vote? Mr. Kostoff replied, yes, they are not potted plats and until a court decides this issue, they can vote. Mr. Jones stated he felt they should abstain because they are part of the vote that is the people's case. Mr. Pelot stated it's a matter of upholding the Constitution or not, and your sworn oath and if you don't you are remiss in your duties. Mr. Jones and Mr. McGlone disagreed. Mr. Kostoff stated they are in their positions until January 1, 2009 at the very least, and they have certificates of election, which they were duly elected by this community to serve. Mr. Jones asked Mr. Kostoff if he had a copy of Roberts Rules in front of him or if he would like to read his copy? Mr. Kostoff replied no, he is comfortable with his opinion.

Roll Call: Yeas: Zita, Braman, Hlas, Pelot
Nays: Jones, McGlone, Mowery

Motion passed 4-3.

ADJOURN:

There being no other business to come before the Regular Council Meeting, the meeting was adjourned at 7:07 PM

Scott Pelot, President of Council

I, Karla Richards, CMC-Clerk of Council for the City of Norton, do hereby certify that the foregoing minutes were approved at a Regular Council Meeting held on August 25, 2008

Karla Richards, CMC-Clerk of Council

****NOTE: THESE MINUTES ARE VERBATIM****

All Council & Committee Meetings will be held at the Norton Safety Administration Building, unless otherwise noted.