

To: The City Council

Date: July 30, 2010

From: George G. Garver

Topic: The Hiring Process for the Assistant City Attorney

In the event Council wishes to have a complete review of this hiring the following information is being provided.

- **The City Attorney exercised his right and legitimate need for an Assistant City Attorney. He asked HR to post a notice of an opening.**
- **HR had no current position description available since the city had not had an employee in this role for many years. In an effort to develop a current job description HR secured position descriptions from Cedar Park and Austin.**
- **The two position descriptions were used to help develop a potential job posting. Before the actual posting for this position took place the document was given to the City Attorney for his review. After some discussion there was general agreement on the final content of the posting. HR then posted this notice on line at locations where it might attract the best candidates. (A copy of the posting is attached.)**
- **Of particular importance is the fact that this posting listed prior municipal experience as a qualification for this position. Prior municipal experience means what the terms state i.e.: The candidate as an employee has previous experience as an Attorney for a Municipality or the candidate has work experience with a law firm or other entity which provided legal services to a Municipality.**
- **HR received fifty six applications for this position. Numerous applicants met the stated qualifications for this position including a number of candidates who were originally interviewed for the position of City Attorney by a sub-committee of the council. Later several of these candidates were interviewed by the entire council for the position of City Attorney. There was no shortage of qualified candidates for the position of Assistant City Attorney.**
- **All of the applications were sent to the City Attorney. He singularly screened and interviewed those who he thought were promising candidates.**
- **Later he brought the papers of one candidate to Kevin Russell and Paul Brandenburg asking that a specific candidate be hired. Both the City Manager and the Administrator in charge of HR told him that this person did not meet the requirements for this position. Both recommended that he**

be very careful for this was likely to be a problem if he were to hire a candidate who did not meet the qualifications listed on the posting.

- The City Attorney said this was the person he wanted to hire. Based on his demand this candidate was hired by the city.
- Later the City Manager included in one of his Friday Bulletins to Council a notice that a person had been hired. He included in his bulletin the application and the resume for this person. This has been past practice to include this information when a senior person has been hired by the City.

What are the problems with this series of events?

- The City Charter requires that this recommended hiring be first approved by the City Council. This did not take place. This mandate is clear.

There shall be such assistant City Attorneys as may be authorized by the Council and appointed by the City Attorney with the approval of the City Council, and such assistant City Attorneys shall be authorized to act for and on behalf of the City Attorney. The City Attorney(s) and any assistant City Attorney(s) serve solely at the will of the Council.

(Res. No. 050603-B, 5-3-03)

- The qualifications of the recommended candidate did not meet the criteria for the position. Municipal experience was listed as one of the qualifications for the position. The posting did not state that municipal experience was "preferred, desired or other experience might be equivalent. The fact is this candidate had no prior municipal experience.
- The City Charter states that in the absence of the City Attorney the Assistant City Attorney will act in place of the City Attorney. We then have a potential situation where our current Assistant City Attorney could become the Acting City Attorney. Thus the city could have a person who has little or no municipal experience heading up our legal department.

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- Since there were highly qualified candidates for the position the hiring of this candidate raises a potential serious conflict with Federal Law. The Equal Employment Opportunity Commission is charged with the responsibility of making sure all candidates are given equal consideration. To give preferred consideration to one candidate who did not meet the posted minimum standards may well place the city in a most difficult legal position.
- Several of the qualified candidates were in legally protected classes. One minority candidate was interviewed by the entire City Council when she applied for the position of City Attorney. She had six years of experience as an Assistant City Attorney in a larger city. Council was much impressed with this person but felt they would like the candidate to have more "municipal experience". Following her interview with the entire City Council statements were made by several council members that she would make an excellent candidate for the position of Assistant City Attorney.
- If there were no acceptable candidates available the City Attorney could have recommended that the qualifications be changed and the position be reposted.
- Council may remember that the posting for the City Secretary vacancy was rewritten and reposted to allow our then Assistant City Secretary to qualify for consideration.
- The interviews of the candidates for the position of Assistant City Attorney were done by only by the City Attorney. The City has a long history of several individuals helping with the interview of candidates for key positions. Collective judgment has always been an asset with this process. Multiple persons assisted with the following interviews, the Police Chief, the Fire Chief the City Attorney, the Director of Technology, the City Secretary, the director of Community Development, etc, etc.

What Process May Allow this Situation to be Rectified?

- Invalidate the hiring of our current Assistant City Attorney by Council Action.
- Have Council authorize her hiring as Interim Assistant City Attorney.
- The above action would keep her on our payroll as an Interim employee with the same salary and benefits she is currently being paid.
- If she is to be considered for the actual position it would be necessary to change the language in the posting.

- This would allow her to apply if she wishes for the position using the new job description.
- It is recommended that Council direct that the screening and interview of the candidates follow City protocol.
- If after a new search is conducted it is determined that she is still the desired candidate extend to her the position of Assistant City Attorney subject to the approval of the Council.
- Before any candidate is hired have Council approve of her hiring as required by our Charter.

The above action if taken promptly may help avoid legal problems and put this issue to rest. This process does not take away from the City Attorney his right to make the final decision as to who to hire for this position. His right however is subject to a review of his recommendation by Council as per the Charter.

This document was prepared in my home office with out any secretarial assistance from staff. Many hours went into gathering the data and the preparation of a readable format. ggg

Posting Preview

Posting Details

Posting Number: 0800078
 Job Title: Assistant City Attorney
 Department: Legal Department
 Position Type: Regular
 FLSA Category: Exempt
 Pay Group: 16
 Hiring Range: \$66,479 - \$87,336 Annually DOQ
 Work Schedule: TBD
 Posting Date: 12-22-2010
 Closing Date: 01-29-2010

Position Summary

Under direction of the City Attorney, assists in representing the City in all litigation including preparing legal briefs, developing strategy, arguments and testimony in preparation for trials and hearings, including administrative hearings. Assists the City Attorney in providing legal advice to City officials and departments. Draft ordinances, resolutions, contracts, agreements, deeds, leases, franchises, etc.; review documents prepared by other agencies or parties; and approve as to form in writing all proposed ordinances before they are adopted, or file any objection in writing with the City Council.

Minimum Requirements:

Graduation from an accredited law school with a Doctorate of Jurisprudence, plus at least five years of experience as an attorney. Shall have practiced law in the State of Texas including experience as it pertains to municipal government matters; for example, litigation and commercial law, land use and development, zoning, contracts, civil service, labor relations, water or waste water, or electric.

Knowledge/Skills/Abilities:

Knowledge of civil law, judicial procedure and rules of evidence, ordinances procedures of processing, recording and preparing legal documents, records, and principles and methods of legal research; knowledge of municipal codes and applicable state laws and federal statutes; knowledge of open meetings/open records laws; establishes good working relationship with other entities, communicates well with public and other judicial bodies; knowledge of municipal organization and City Manager form of government. Knowledge of commercial and contract documents and knowledge of Municipal structure. Reading: Reads various legal documents. Writing: Writes reports and memoranda, and prepares legal documents accordingly. Math: Perform basic mathematical calculations to prepare, analyze and monitor budgets, and perform statistical analysis. Reasoning: Analyze legal documents; reviews and evaluates pertinent decisions, policies, regulations and other legal matters. Advanced Theoretical Knowledge: Demonstrates knowledge of City ordinances, municipal codes and applicable state laws and federal statutes.

Certificates/Licenses Required:	Must be a member of the Texas State Bar Association, licensed to practice law in the state of Texas and remain active with all Texas Bar annual requirements.
Preferred Qualifications:	
Physical Demands	Standing, sitting, walking, lifting/carrying, handling, fine dexterity, bending, vision, hearing/talking, pushing/pulling, reaching, foot controls.
Environmental Factors and Safety Hazards:	None
Equipment, Machines, Tools, and Work Aids:	Printer, copier, telephone, calculator, personal computer, Internet, fax machine, scanner.
Special Notes for Applicants:	