



Richland County Council

SPECIAL CALLED MEETING
April 9, 2018 – 3:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29204

COUNCIL MEMBERS PRESENT: Joyce Dickerson, Chair; Bill Malinowski, Vice Chair; Greg Pearce, Seth Rose, Calvin “Chip” Jackson, Norman Jackson, Gwen Kennedy, Paul Livingston, Jim Manning, Yvonne McBride, Dalhi Myers

OTHERS PRESENT: Michelle Onley, Jamelle Ellis, Brandon Madden, Sandra Yudice, Kim Williams-Roberts, Gerald Seals, Beverly Harris, Trenia Bowers, Dale Welch, Brad Farrar, and Ismail Ozbek

1. **CALL TO ORDER** – Ms. Dickerson called the meeting to order at approximately 3:00 PM.

Ms. Dickerson stated Ms. McBride is on her way to meeting and that Mr. Smith will not be in attendance due to illness.

2. **ADOPTION OF THE AGENDA** – Mr. N. Jackson moved, seconded by Mr. Livingston, to adopt the agenda as published.

In Favor: Dickerson, Livingston, Rose, Pearce, Kennedy, Manning, Myers and N. Jackson

Opposed: Malinowski and C. Jackson

The vote was in favor.

3. **EXECUTIVE SESSION:**

- a. **Personnel and Contractual Matter (County Administrator)**

Mr. Farrar stated Items #3(a) and #3(b) are listed as personnel/contractual matters. They may also entail the receipt of legal advice. There are a number of independent basis for Executive Session under the Freedom of Information Act. It is Council preference whether to do that in Executive Session or not, but they do qualify.

Mr. Livingston moved, seconded by Mr. Pearce, to go into Executive Session.

In Favor: Livingston, Rose, Pearce, Kennedy, and Manning

Opposed: Malinowski, Dickerson, McBride, C. Jackson, Myers, and N. Jackson

The motion to go into Executive Session failed.

Mr. Farrar stated under SC Home Rule, Title 4, Chapter 9, there is a section that deals with the Council – Administrator form of government. There is a statute in that article (4-9-620) that refers to the hiring, and also the removal, of a County Administrator. For the removal of a County

Administrator there is a requirement of written notice of the reasons for removal. That is something that Council needs to consider this afternoon. The statute is as follows: "If the council determines to remove the county administrator, he shall be given a written statement of the reasons alleged for the proposed removal and the right to a hearing thereon at a public meeting of the council. Within five days after the notice of removal is delivered to the administrator he may file with the council a written request for a public hearing. This hearing shall be held at a council meeting not earlier than twenty days nor later than thirty days after the request is filed. The administrator may file with the council a written reply not later than five days before the hearing. The removal shall be stayed pending the decision at the public hearing."

The first thing that Council would want to take up to fulfill this statutory requirement would be the written statement of the reasons alleged for the proposed removal. And the statement needs to include the right to a hearing at a public meeting of Council.

Ms. Dickerson inquired if we need to start writing or stating the reasons now.

Mr. Farrar stated the technical formality of how this is memorialized is up to Council, but it could take the form of a motion. Somebody could move and say that any, or all, the reasons listed are the reasons for the action. That would need to be seconded and voted on. If that is adopted by Council then you would have the written reasons, speaking as a Council. Those would then need to be transcribed. That portion of the meeting would need to be reduced to writing, so that could be delivered reflecting the vote, assuming that would pass.

Mr. N. Jackson inquired if we would discuss for cause or not for cause to decide how to move forward first.

Mr. Farrar stated the statute refers to the reasons given for the action. To simply state that you are taking the action is insufficient. You need to actually list the reasons. There is no number of reasons that are needed. It just needs to be any and all.

Mr. Pearce stated he does not understand the relationship between the contract you have with the County Administrator and the statute. Historically, in his tenure, we have only had one instance similar to this. That particular instance, when the original was taken not to renew the contract, rather than proceed with this, the individual simply resigned. This is the first time that we have had to deal with the statute. To be quite honest, we did not know about the statute. What action this Council took was to terminate the current contract. His interpretation of the contract was it was an at-will contract. You could either terminate for cause or not for cause. How does that tie in now to giving reasons for termination?

Mr. Farrar stated the contract is in addition to, not in lieu of the statute. Council took an action last Tuesday, relative to the contract, which Council has the right to do. The Administrator serves at the pleasure of Council. To that extent, you do not have to have anybody serving as your Administrator that is not at the pleasure of Council. When you have the natural expiration of the contract, where you are talking about a situation where you are not going to renew, it is like a tenant who the lease is up and you are going day to day. At that point, there is not a fixed term anymore. Now that person would still be compensated under the terms of the previous agreement, but there would be no definite term. In this situation, there was a definite term under the contract, which I believe was entered into in December 2016 for a 3 year period. It is a definite term in the contract. The rights of the Administrator, under the Council – Administrator form of government, in the statute...in this case they actually marry up to the contract because the contract does reference 4-9-620. The Administrator serves at the pleasure of Council, subject to the protections of 4-9-620. This is a step,

if you go through with this process, it is not a step whereby it changes the will of Council for how the Administrator serves at the pleasure. It is just an extra right of the Administrator to have a public hearing where, if he so chooses, he can present certain things in defense of the reasons that Council would give for the removal. It is more of a legislative type hearing than it is a quasi-judicial hearing. There is some precedent for this. There is one Court of Appeals case, Drawdy vs. Town of Port Royal. This is important as Council considers the reasons given. In that case, the Court said the reasons given for the removal of the Administrator were not meaningful for Mr. Drawdy to make a meaningful response at the hearing. So, they said it was a perfunctory hearing. For example, when Council says the person was not transparent, they need to say transparent about what. What things did you not have the information you wanted. Again, it is Council's decision what reasons you choose to give, but they need to be specific enough to inform him of why the action was taken.

Mr. Pearce stated, for clarification, the Council will draw up a list of reasons for termination. We will present those to the Administrator. He will have time to review that and we will have the public hearing. Would you explain what takes place at this public hearing?

Mr. Farrar stated in the Drawdy case they turned the matter over to a Master-in-Equity who conducted the hearing. The opinion did not go into what that entailed. There is not a requirement for Council to speak at that hearing. You cannot be compelled to participate in the hearing. It is an opportunity for the Administrator to present anything he cares to present, which may include witnesses. One of the thing you may want to do is set a time period. It needs to be a meaningful period, where you say we are going to give you 2 or 3 hours. It needs to be defined period, so you have control over the scope of this thing. It needs to be a meaningful opportunity for the Administrator to go through and say as to Reason #1, here is what I want to tell you and I may need to bring in witnesses to do that. Council cannot be compelled at this process to talk, if they do not want to.

Mr. Pearce stated we go through the public hearing. The Administrator presents whatever information he had. Can the public come and speak like in a public hearing?

Mr. Farrar stated the only situation where you would have anybody speaking other than the Administrator would be a witness the Administrator would call. If you give a period of time for the Administrator to present his case, as long as what he is doing is appropriate to his case, whether it is him or a witness, he would have an opportunity to do that. The time period would be the only parameter, other than decorum.

Mr. Pearce stated so the public hearing comes to a close. Then what happens?

Mr. Farrar stated, at that period, Council would want to reflect on the information and if there is any action Council wants to take, in light of that presentation, other than what Council has already done, you could do that. You could affirm the previous decision of removal. It's rather unclear what happens after. That's why it is more of a legislative hearing. You are actually receiving information. At that point, you could say noted. Thank you very much. Or you could take another vote. Or you could change your mind.

Mr. Pearce stated, for clarification, if the previous vote was sustained that would be the end of it.

Mr. Farrar stated that would be the end of the 4-9-620 process.

Mr. Pearce inquired if there are rights beyond that.

Mr. Farrar stated there are going to be contractual and legal rights the Administrator can avail himself of, should he so choose.

Mr. Pearce stated, hypothetically, at the end of the hearing, if for some reason, if there were another vote, he still would not have a contract.

Mr. Farrar stated Council would have to rescind the vote taken last Tuesday and that requires certain notices under their rules. Council needs to manifest its will. However, you do that the vote will follow that. If the hearing required, under 4-9-620, is not a meaningful hearing that may not end the process. For example, if there were not specific reasons and there was not a reasonable opportunity to be heard, there could be a complaint about that.

Mr. Pearce stated he is unclear as to the degree of specificity needed in the original notice.

Mr. Farrar gave Mr. Pearce the following example: one of the reasons given for Mr. Drawdy's termination was, "It has come to the Council's attention there has been a lack of loyalty to, and criticism to, other members of Council and their actions." In that situation, they would have needed to say specifically, (a), (b), and (c) [i.e. You were not loyal to Councilperson "X" on this action.] Other words, it is going to be..."generally I'm not loyal", what does that mean? Give me some specifics on that. That is the type of specificity. In this case, it would be disloyalty. They said you had not given your undivided attention and you have been preoccupied with personal matters. What is an example of where you have not given your full attention? It just needs to be so he knows what you are talking about. We run into the same thing with County code enforcement cases. If you put a code section in there and somebody says I have no idea what that is, can you tell me what it is I actually violated. That is the kind of thing you are getting out. So they can make a meaningful defense, in other words.

Mr. Livingston stated, for clarification, this process is the only way an Administrator can be removed from his position.

Mr. Farrar stated this is the only statutory process that he is aware of. Now in the Municipal Code, Title 5, it is almost verbatim. Under the 5 types of government under Home Rule: Council-Administrator, Council-Supervisor, Council-Manager, Board, and Council. In the Board and Council situation, the Board and Council are responsible for policy and administration. But under the Supervisor, Manager, Administrator forms of government, the Administrator is responsible for administration. In those circumstances, Title 4, deals with this process for removing an Administrator. It does not deal with the contractual piece. You do not have to have a contract for an Administrator. You do not have to have a definite term. It is just most times there are contracts for Administrators. It is a position of that significance. During the period of that contract, the Administrator serves at the pleasure of Council. You could sign the contract and terminate on the same day, if it is no longer your pleasure for that person. Then we look to the contract to see what potential consequences that may entail, especially as to the Administrator's rights and remedies. This is the only process to deal with the removal process.

Mr. Livingston inquired if it is up to Council to determine what a reasonable reason for removal of an Administrator is.

Mr. Farrar stated it is your employee. You have the absolute right to not have who you do not want as your Administrator. If you want to part ways with your Administrator that person serves at your pleasure. It is just that the statute says, for purposes of removal, there have to be written reasons for it.

Mr. Livingston stated so it does not matter whether someone agrees with your reasons or dislikes your reasons.

Mr. Farrar stated it has to be a majority Council. It does not be a unanimity of Council. It does not need to be a super majority. An eleven person Council would be 6 of the 11.

Mr. Manning stated he appreciated Mr. Farrar giving them some examples from the case of what not to do. He inquired if there were any cases with examples of what is successful to a body like ours.

Mr. Farrar stated he is not aware of any cases. This is not something there is a lot of cases on. What they said was would these reasons that were given, and not all of them were found to be deficient, there were a couple they pointed to and said if you would just spell out a little bit more specific that would satisfy. This is about satisfying the statutory requirement, not about a merits hearing where you are necessarily moved by the presentation to change your mind. You just need to have the opportunity for the person to present his side of it.

Mr. Manning stated, for clarification, it did point to cases as good examples.

Mr. Farrar responded there were no case, he is aware of, that talked about here is how you go about doing this. He stated you tend to have cases like this when there something that did not go the right way. If it went the right way, it probably wouldn't have been challenged.

Mr. Manning stated this is not Mr. Farrar's area of special practice, correct?

Mr. Farrar stated as an in house, government counsel you need to know a lot about a lot of things, but you may not be a subject matter expert in every area. And certainly employment law is not something he does exclusively.

Mr. Manning stated he knows a lot of times we bring in people with specialties. He inquired if that is a possibility for this body, in this case.

Mr. Farrar stated they do have Mr. Vance Bettis here and prepared to talk to you, as Council may desire.

Mr. Manning stated he would be interested in hearing from Mr. Bettis.

Mr. Bettis stated he reaffirms everything that Mr. Farrar has said. This is a statutory process. The statute says the Administrator serves at the pleasure of Council. In order for Council to remove an Administrator, you have to do it according to statutory procedure, which allows the Administrator to request a public hearing. The Administrator does not have to request that public hearing. If the Administrator does not request the public hearing within the time from which the notice of removal is served upon him, then it just moves forward. If the Administrator does request a public hearing, within the time specified by the statute, then the public hearing has to be held and the removal is stayed until the hearing occurs. The hearing has to occur not less than 20 days, after written notice, and not more than 30 days. So it is a defined period of time. If the Administrator says he would like a hearing, the Administrator is entitled to a hearing. His entitlement to a hearing does not alter the fact that under law the Administrator serves at your pleasure. Your pleasure means, in the case of Council, the pleasure of a majority of Council at any given time. There is only one Council and Council acts, based on votes. If an eleven person Council, 6 people think that it is no longer their pleasure, even though the other 5 think it is their pleasure that person continue, the vote of Council

is that it is not the pleasure and he serves at the pleasure of Council and not each individual Council member. That process must be complied with, but the Administrator can say he does not choose to exercise his right to a public hearing. The public hearing is what he would call a name clearing hearing in which case the Administrator will have been provided notice of the specific grounds for removal and will have an opportunity to respond to each one of those grounds. He anticipates the Administrator is going to tell people some things that do not want to hear, but that is the nature of the hearing. The Administrator cannot cross examine you, engage you or force you to say anything that you do not want to say. On the other hand, if you want to join in there is nothing to prohibit that. It is simply an opportunity for the Administrator to come before Council, as a body, state his position on the removal in a public forum. After that if anything the Administrator has said causes the Council to change its view on one or more matters, Council is free to amend its vote, withdraw its vote, or revote. This is one piece of the puzzle. There is a contract in place. The contract specifies what consequences there are in the event the Council terminates this contract prior to the specified duration. He believes, although he has not seen the contract, contracts usually say if you terminate it without cause then this what happens. If you terminate it for cause then this is what happens. And the people that decide whether you fired somebody with or without cause are judges. That is why Brad said, if you comply with this hearing process here. This is the end of the statutory process, but it is not the end of the line. That is why these things need to be reviewed carefully in terms of what the consequences are. He stated typically a contract for 3 years would say if it is terminated without cause prior to the expiration Council will pay so much in liquidated damages. The contract still is one where the Administrator cannot force you to retain him as your Administrator against your will. But the Administrator can insist that you pay what you agreed to pay in the event that you do something contrary to the contract.

Mr. Manning stated the motion on Tuesday night was to terminate the contract and the item before us is "Personnel and Contractual Matter". He stated he heard Mr. Bettis say no one had shared the contract with him.

Mr. Bettis stated Mr. Farrar sent him the contract this afternoon, but he had not seen it prior to that time.

Mr. Manning stated he was a bit confused. The contract has been sent to Mr. Bettis, but he has not seen it.

Mr. Bettis stated he has not read through it.

Mr. Manning thanked Mr. Bettis for his clarification and in depth additional information after the letter. His question to Mr. Farrar was about examples of where this had been done successfully by bodies, like ours, and that part he did not hear addressed.

Mr. Bettis stated cases do not generally come out that have been successful. The only case he is aware of that has been litigated is the Drawdy case. As Mr. Farrar said, you cannot simply say, "well I don't think you get along well with people" so we are not going to keep you as our Administrator. If you can say, "You have been insubordinate toward Councilmembers A, B, and C. Specifically, when Councilmember C asked you do such and such. You told him it would be a cold day somewhere when I do that." That is specific. Again, the Administrator does not have to agree with the majority of Council that that specified item constitutes cause to terminate him, but that is the kind of specificity they are looking for.

Ms. Kennedy inquired as to when Article 4-9-620 come about.

Mr. Bettis stated it has been in the Code since Home Rule.

Mr. Farrar stated originally 1962 Code Section and was adopted in 1975 under Home Rule. So it has been around for some time.

Mr. Bettis stated it was said earlier if a person resigns or the contract expires of its own term you do not have to do it, but if someone chooses to exercise their right to a hearing this is the procedure the statute specifies.

Mr. C. Jackson stated he wanted to be sure he was clear on the facts we are hearing today, as it relates to the contract and the personnel matter. Number one this was not a resignation. The action taken, this is not a review of the contract. Number three, this was not a discussion of a contract renewal or a review. This was a premature termination of an existing contract. The current contract was a 3-year contract that issued in December 2016. The Administrator has fulfilled one year and 4 months of that contract and had one year and 8 months remaining on that contract. Therefore, our actions were to terminate that contract prior to the remaining one year and 8 months that remained. Is that correct?

Mr. Farrar responded in the affirmative.

Mr. Livingston stated he is trying to get more clarification on how specific or what type of reason one might need. For example, if someone's concern is the rate of staff turnover. Is that legitimate?

Mr. Bettis stated you won't know until the Supreme Court rules. If you were to say, "We are dissatisfied with your leadership because turnover during the 17 years you have been the Administrator has been extraordinarily high. Higher than in other terms of other Administrators and we do not think we can have the kind of continuity and programs that we need when the rate of turnover is this high." He thinks that about as specific as you can get on something like that.

Mr. Livingston stated so the vote last time to terminate the contract it is very clear that the Administrator is still in his role as the Administrator. At what point will the Administrator no longer be the Administrator. Until you go through the hearing, the whole process that person will still be in charge of day to day operation of the County.

Mr. Bettis stated that depends on the will of Council. In his opinion, case law is clear that a public official has a right, until the public official is validly terminated, to receive his pay and benefits. The public official does not have a federal constitutional right to exercise the powers of his/her office. For example, if Clemson University wanted to suspend a tenured professor of linguistics. The linguistic professor could not say, "Nope. By golly, I'm coming to this class and teaching every day until this process is over." Clemson could say, "No, we will pay you your stipulated salary, but until this is over we do not want you back in the classroom. In his opinion, Council could do the same thing with an Administrator. They can say we will continue to pay you, but in the interim we would direct that you not exercise the duties of the Administrator pending finalization of this process. You would continue to pay the Administrator whatever the contractually agreed salary and benefits are.

Mr. Livingston stated in order to move this process on we need a motion with reason for termination to be passed by this Council. What happens after that?

Mr. Bettis stated that motion and specifics would be transcribed into a notice of removal under 4-9-620, which would be served on the Administrator with notice that he has the right to request a hearing under Section 4-9-620 on this notice. The timeframe for him to exercise that right and then

Council make sure Council can comply with the no less than 20 days out, but no more than 30 days out. The Administrator's exercise of that option will trigger a quick need to conduct the hearing.

Mr. Malinowski stated it seems obvious due diligence was not taken prior to the action that was taken based upon the questions and comments. He wanted to have the Clerk to give us clarification regarding the motion. He heard the motion was to terminate the contract. He thought the motion, as it was stated, was to fire the Administrator immediately and then appoint another individual as interim.

Mr. Farrar stated at the first point this motion was made, when he listened to the tape, he heard that the County Administrator's contract be terminated immediately and that Brandon Madden become the acting Administrator. Now there was a discussion of several minutes that took place after that and sometimes Council will say, will someone restate the motion? If it was restated from that, he does not have that. He has the original, which is that the County Administrator's contract be terminated immediately and that Brandon Madden become the acting Administrator.

Mr. Malinowski stated it seems we have a lot of people here asking for examples to give and do we have any cases on citations as to what needs to be done specifically in listing the reasons for that termination to present to the Administrator. He thinks if he was terminated by this Council because of specific reasons those folks need to list those reasons, do what the law says, and move forward rather than trying to keep asking everybody what the specific reasons can or should be. If you've got them, let's list them and move forward.

Mr. Pearce stated, as he understands it, there are 2 potential actions here. One would be an action to temporarily suspend the Administrator's role here until such time as the hearing takes place.

Mr. Bettis stated what he was addressing is someone said what happens between the time we serve notice on the specific reasons and the hearing. And does the Administrator have the authority to exercise the duties of this office on a day-to-day basis. His reply was he thinks Council could request that the Administrator not exercise the duties of the office. The Administrator would receive his pay and that Council would be in touch concerning the date of any public hearing he might request.

Mr. Pearce stated that would be one potential action that this Council would need to take tonight. The second one, and more important one, is to develop letter with reasons for his removal. That is what concerns him more right now. His personal feeling is that he has a responsibility to the people of Richland County. They have asked us to govern for them on their behalf. Right now this Council is divided. Six people in one way and 5 people in another way. What he is more concerned about right now is the ability of this Council to continue to govern together, collectively, make decisions together and work with each other. If we now are going to proceed to sit here, right now, and the 6 people that voted to terminate to now begin articulating reasons for that is going to be very inflammatory. The process that we have started has already proven to be quite inflammatory and he does not want to see that happening again in this body tonight. He wants to maintain some level decorum. Some ability to discuss things with each other. So he is not sure how we go about the process of crafting this document that we need. If he were to say, that he believes there was a failure to maintain a satisfactory working relationship between the Administrator and the Council that would not be sufficient, correct?

Mr. Bettis stated the Drawdy opinion indicates that would not be sufficient.

Mr. Pearce stated then he would have to give specific examples of what that meant.

Ms. C. Jackson stated, at the March 20th Council meeting, he made a motion that we conduct a formal evaluation of the Administrator, the good, the bad and the ugly, by an independent group outside of this Council. It was seconded by Mr. N. Jackson and passed unanimously. Had we followed that, which was previous to this debacle that happened on April 3rd, he is confident that objective evaluation would have yielded some of the very concerns some are struggling to identify as reasons for maybe why the Administrator is not a good fit. That is why I said in that meeting, on multiple occasions, that someone at this level should have an independent group outside conduct a formal evaluation, who would then reach out to all of the people we are talking about tonight. The retention rate, the morale of the organization, the ability for the CEO to work with the legislative body, meaning this Council, and all of the reasons that we are sort of hearing that are innuendos tonight would have been documented, would have been objectively listed and would have made the job, if in fact that was a decision this Council wanted to make, a much easier job and process. Having said all of that, the fact that motion was made and unanimously passed by this group on March 20th, and now subsequent to that, something else has been proposed, does it mean that motion is now defunct and thrown away. And that charge that we were given, on that night, 2 weeks prior is no longer valid.

Mr. Farrar stated he would say that motion is still legally valid, but practically frustrated. He does not know how you would go forward with an evaluation under the present circumstances, but is has not been countermanded. That motion has not been rescinded.

Ms. Myers stated, in harmony with what Mr. C. Jackson is saying, she agrees we are at a point where we have divisions, but those divisions arose because of the action that was taken in direct contravention of what we unanimously agreed to do, with no warning to any of us, other than the 6 who voted that way. There is no desire to not be cooperative, collaborative or fair. She wants to follow the law. She does not think we followed the law. She is not surprised by the Home Rule Act having a provision that protects employees who would be employed under a statute that created this very body. Because she would imagine the law, as it usually does, provides for fairness. There is no difference in this context. Fairness indicates that there is something that should have been done. The fact that we did not do it the right way does not all of sudden spring to life and make it fair. It says that we have now been put on notice that something we did surreptitiously was illegal. We know have to make corrections. She would say, at least for her part, she is not at all unwilling to be cooperative or collaborative, as she always have been. And the notion that because 6 people voted differently from me, and she was definitely in the 5 that voted the other way, does not mean she will not cooperate and have input. Perhaps, as Mr. C. Jackson said, the way to do this in the future is the way the statute says. Certainly she would say that whatever actions we take tonight, we do what we should have done prior to tonight and actually check with the legal department and get their advice. Maybe when we take those actions we won't have the subsequent responsibility to try to fix it.

Mr. N. Jackson stated this Council within the process make a decision and the majority decided to terminate the services of the Administrator, at the Regular Council meeting. It was on the agenda, so nothing was done illegally. The County attorney was here and he never responded or anything. We asked him questions and he said we had the right to do what we did. So as long as the attorney was there, we followed what the attorney said. I think we did ok. We have to give a reason. What he is talking about is what types of reasons. For example, would sleeping on the job. Would that be professional or unprofessional? Because I was reading a document where he has to act professionally. Would sleeping on the job be professional or unprofessional?

Mr. Bettis stated sleeping on the job would be a specific instance of unprofessional behavior.

Mr. N. Jackson inquired if you have to give one reason or more than one reason.

Mr. Bettis stated whatever reasons you give have to be specific.

Mr. N. Jackson stated so you could give a reason of sleeping on the job. That could be one reason. Then you have not carrying out Council's wishes. For example, the Renaissance Plan where he attempted to purchase several properties without Council's wishes before it is done. Another reason, also is misrepresenting Council. Where with the sewer contract, the District One School Board was approached that Council had changed the plan and wanted more funding from the school district. Council did not know anything about that. So that was misrepresenting Council when they went to the school board to try to get more money for the Lower Richland Sewer Program. If we want to state the reasons, there are a several reasons right there. He is ready to make a statement or give a reason now after listening to his colleagues on how to move forward.

Mr. Pearce stated, for clarification, you have for cause and not for cause. He does not understand why you have to provide the specifics if it is an at-will contract.

Mr. Bettis stated because of the statutory process.

Mr. Livingston stated it is extremely important to him to follow any statutory requirements. Any law that is required. He has been involved in this process for a long time. This is something that never came up. He has been involved with processes where Administrators and Superintendents have been dismissed. So, this is something foreign to him not being a lawyer. Although he regrets the process, he can tell you why he did what he did. Mr. C. Jackson is correct. We did talk about an evaluation process, but when there was an opportunity for him to make his decision, he thought about the times we have talked about evaluations and he knew there was going to be another 6 months to probably finish this process. He was very concerned about the significant, rapid turnover of staff, as well as, issues in this County. He was afraid that in 6 months a lot of his concerns may have worsened. That is why he made his decision. Clearly, he does not think the process was the greatest thing in the world, but he thinks his decision was the best decision in the interest of this County. Next, in order to move this process forward. In order to terminate the Administrator's contract. In order to make it clear that the Administrator duties are no longer exercised as Administrator, although of course he would have to be paid. In order to state a reason like, in his opinion, significantly high rate of staff turnover. What does he have to do to put a motion like that in process to move this forward?

Mr. Bettis stated the specifics need to be put in writing.

Mr. Livingston stated if that was done, as he outlined, and it was passed by the majority of this Council, where do we go from there?

Mr. Bettis stated then you serve that on the Administrator, as a notice of intent to terminate by Council, with the added language about, if he so chooses he can exercise his rights under Sec. 620 to have a public hearing on this matter. If he chooses to not exercise that right, the termination will become effective whatever the date is after the time for notifying he wants a public hearing has expired. Otherwise, it will become effective after the public hearing, unless it is rescinded at that public hearing.

Mr. Manning asked Mr. N. Jackson what the 3 reasons he outlined for the Administrator's termination were. As he recalled, the first was sleeping and the third was about the sewer, but he does not recall what the 3rd reason was.

Mr. N. Jackson stated it was the Renaissance Plan and purchasing property without consulting Council.

Ms. Dickerson stated she wants her Council members to know and understand she respects the wish of the Council and will do whatever the will of this Council is. If 6 people vote for this, that is the will of the Council and her job as Chair, at this point, is to make sure she does her best to exercise the will of this Council. To address, Mr. C. Jackson, it was voted on and it is her job to turn it over to HR. It is not her job to go out and recruit. It was being addressed. There is a process to do that, which would have had to be brought back to Council once HR contacted the person. She wants this body to look at ways where we can come together and work together for the betterment of Richland County. She wants Council to know she will do her best to adhere to the will and wishes of this Council, as a majority. No she did not vote to terminate, but whatever the will of this 6 votes are, that is what she will do her best to exercise according to the law. She thanked Mr. Pearce for his comments. They were very timely and expressed some of the things she was feeling.

Ms. McBride stated she does not feel that the Council is totally fragmented. On a number of votes we have a 5 to 6 split. We happen to disagree on this particular issue. She also believes the majority rules. And she did not vote in favor of termination because she believes in working the process. At that time, she did not feel the process worked. The process has not worked on many different occasions with us, so she hopes this is a learning lesson in terms of letting us let the process work, as it is supposed to. She thinks we have an excellent Council. We have the ability to work together as we had done so many times. This is just one instance where we differ and we can work this out also.

Mr. Manning stated he was prepared to make a motion, at this point. He moved that this body create the appropriate legal written document for the dismissal of the Richland County Administrator for the reasons of sleeping on the job and rapid turnover of staff. That the document provide the specifics, as required, and that the County Administrator be placed on administrative leave, with pay, or whatever is the proper wording for him not to continue in his responsibilities and duties as of this motion. And that whatever is required for the County Administrator not to be on the property and conducting County business to be established as well. Mr. N. Jackson seconded the motion.

Mr. C. Jackson made a substitute motion, seconded by Ms. Myers, that the motion made by him at the March 20, 2018 Council meeting to have an external evaluation done of the Administrator, by independent party, and the results brought back to this Council be reinstated tonight and take precedent, at this time.

In Favor: Malinowski, Dickerson, McBride, C. Jackson and Myers

Opposed: Livingston, Rose, Pearce, Kennedy, Manning and N. Jackson

The substitute motion failed.

Mr. Pearce inquired of Mr. Bettis if the motion is sufficiently substantive to meet the requirements.

Mr. Bettis stated he is not comfortable giving legal advice to clients in a public session, but that is the forum in which the Council has chosen to do it. He is prepared to render a legal opinion, but he will tell you that no good lawyer wants to do that.

Mr. Pearce instructed Mr. Bettis not to answer his question.

Mr. Pearce moved, seconded by Mr. Manning, to get receive a legal opinion.

Mr. Malinowski inquired if Council members are allowed when a motion is made to get outside input on whether or not a motion has the needed specifics or is up to the Council member to make the motion and let it lie where it lies.

Mr. Farrar stated within the attorney-client privilege there is all kinds of advice that can be sought. When you have it in open session, you effectively waive that privilege. There is all manner of things you can ask for legal advice on. The issue you are going to encounter more are the facts leading to the preparation of the motion, as opposed to the substance of it.

Mr. Malinowski stated it seems to him that we are asking someone to create the motion. Is that proper?

Mr. Farrar stated he was not going to characterize the process that is taking place here. He thinks you can get a legal opinion on how those reasons might resonate were they litigated.

Mr. Pearce stated it is clear to him that we have historically not received legal advice in the appropriate time. That is part of why we are here tonight dealing with a situation where we did not get appropriate legal advice in advance of an action. He stated he is trying to avoid taking another action in which we are going to end up back in here or somewhere else. That was his basis for simply clarifying it. He is attempting, by his motion, to construct any kind of motion. He is trying to get the legal advice, so we do not make any additional mistakes.

In Favor: McBride, Livingston, Rose, Pearce, Kennedy, Manning, and N. Jackson

Opposed: Malinowski, Dickerson, C. Jackson, and Myers

The vote was in favor of going into Executive Session.

Mr. N. Jackson moved, seconded by Mr. Manning, to come out of Executive Session.

Mr. N. Jackson moved, seconded by Ms. Kennedy, to recess for 10 minutes.

In Favor: Pearce, Rose, McBride, N. Jackson, Dickerson, Livingston, Kennedy, Myers, C. Jackson and Manning

Opposed: Malinowski

The vote was in favor of the 10 minute recess.

Mr. Manning moved, seconded by Ms. Kennedy, to come out of recess. The vote in favor was unanimous.

Mr. Manning moved to go back into Executive Session for Items 4(a) and (b). The motion died for lack of a second.

Mr. Manning moved, seconded by Mr. N. Jackson, that the County governing body remove the County Administrator as provided for in SC Code Ann. Sec. 4-9-620 for the following reasons: (1) Unauthorized major change of County policy direction, specifically at a recent public County Council meeting the Richland County Director of Transportation presented an extensive report in open

session of the County's plan to transfer management of the Penny Tax Transportation Program from the Program Development Team (PDT) to the County using a gradual process over the next 18 months. No authorization was granted for this presentation. No prior knowledge of this plan was shared with the full Council and no one has taken responsibility for the release of this information. (2) Rapid turnover of the County staff, especially senior staff and department level personnel, in comparison to the rate of turnover in prior administrations. (3) Sleeping during public meetings. Including during County Council's regular meetings on March 6, 2018 and March 20, 2018. (4) Councilmembers' Renaissance Program questions have gone unanswered. Specifically, how this process has moved from RFQ to hiring a firm for preliminary space allocation studies only into negotiating a contract for hard architectural plans.

In Favor: Pearce, Rose, N. Jackson, Livingston, Kennedy and Manning

Opposed: McBride, Malinowski, Dickerson, Myers, and C. Jackson

The vote was in favor.

Mr. Manning moved, seconded by Mr. N. Jackson, that the County Administrator be on administrative leave, with pay, throughout the removal process set forth in SC Code Ann. Sec. 4-9-620 and that during that time he not report to work at the County building or elsewhere and not undertake any duties, including but not limited to, executing any contracts, deeds, or other legal documents, or otherwise pledging the resources or rights of Richland County.

In Favor: Dickerson, McBride, Livingston, Rose, Pearce, Kennedy, Manning, C. Jackson and N. Jackson

Opposed: Malinowski and Myers

The vote was in favor.

b. Personnel and Contractual Matter (Acting or Interim County Administrator)

Mr. Manning moved, seconded by Mr. N. Jackson, to go into Executive Session.

In Favor: McBride, Livingston, Rose, Pearce, Kennedy, Manning, and N. Jackson

Opposed: Malinowski, Dickerson, C. Jackson, and Myers

The vote was in favor.

Ms. Dickerson moved, seconded by Mr. Malinowski, to come out of Executive Session.

In Favor: Malinowski, C. Jackson, Myers, Pearce, Kennedy, Manning, Dickerson, N. Jackson, Livingston, Rose, and McBride

The vote in favor was unanimous.

Ms. Dickerson stated no action was taken on this item. Council should be able to announce who they will be looking at to serve as Acting Administrator within the next several days.

Mr. Manning stated, according to the organization chart, until the decision has been made the Assistant County Administrator is in the position to handle the day-to-day operations.

4. **ADJOURNMENT** – Mr. Pearce moved, seconded by Mr. N. Jackson, to adjourn.

In Favor: Malinowski, C. Jackson, Myers, Pearce, Kennedy, Manning, Dickerson, N. Jackson, Livingston, Rose, and McBride

The meeting adjourned at approximately 6:18 PM