

GENEVA SPECIAL COMMITTEE OF THE WHOLE MINUTES
August 7, 2023

Elected Officials Present: Mayor Burns, Ald. Bowring, Ald. Kilburg, Ald. Kosirog, Ald. Maladra, Ald. Marks, Ald. Mayer, Ald. Paschke, Ald. Swanson, Clerk Kellick.

Elected Officials Absent: Ald. Bruno, Ald. Hruby.

Others Present: City Admin. Dawkins, Asst. City Admin. Ben McCreedy, City Attny. Fintzen, Dir. Tymoszenko.

Call to Order

Mayor Burns called the special meeting to order in City Hall Council Chambers at 7:35 pm noting all were present save for Ald. Bruno and Ald. Hruby.

Items of Business

Discussion Regarding Limitations of Non-Home Rule Municipal Authority.

On a question, Mayor Burns noted that this meeting, as a Special Committee of the Whole meeting, was not being broadcast. The Mayor then introduced Scott Fintzen, an attorney with the firm of Gaido & Fintzen. Attny. Fintzen is also a City Attorney.

Attny. Fintzen stated that he was asked a couple of years ago about the authority of the Cultural Arts Commission in Geneva. He noted that Geneva is a non-home rule community and stated that today's discussion is simply a question regarding whether as such, the City has the authority to do what it's doing with respect to the CAC and if not, what does that mean?

He noted that the Geneva Code of Ordinances 2006-33, 5-1-2006, Chapter 10 focuses on the CAC. The question he was specifically asked was whether the Commission has the authority to solicit contributions from the public or otherwise engage in fundraising activities. He stated that there is no authority given by the City Council for the CAC to solicit donations from the public. The next question, therefore, is whether the City Council can amend Section 3-10-5 of the Code to allow the CAC to fundraise. Attny. Fintzen stated that his view is no. He was unable to find a general grant of authority authorizing the City as a non-home rule municipality to foster cultural arts in the City.

He noted that the City's authority is limited by the Illinois Constitution and by rulings from the Illinois Supreme Court and the 2nd District Appellate Court that as a non-home rule unit, it can exercise only those powers expressly delegated by the Illinois General Assembly, or those that arise by necessary implication by designated powers. Without such authority, the City's enactments are void.

He noted that he reviewed the entire municipal code which did not give a broad grant to a non-home rule community for fostering cultural arts. Article 11, division 45-45.3 identifies specific cultural arts activities in which the City may be authorized to engage. Of those, including the establishment of a municipal band, cultural centers, and art commissions, only the establishment of cultural centers relates to the establishment of a Cultural Arts Commission. According to the Code, an arts commission can only review and approve works of art before they can be erected in any public space, and advise personal property owners in relation to the beautification of their property. Division 45-1 does not grant the City general authority to foster cultural arts in the City.

Because the Geneva voters have not petitioned to have the question of a performing arts tax levy put on the ballot and haven't approved such a question, the City is not required to do so.

After reviewing Section 3-10-5 of the Code of Ordinances, Attny. Fintzen noted that his recommendation is that because of the lack of clarity with respect to the purposes and authority of the CAC, the ordinance itself should be repealed because it is arguably authorizing actions that are beyond the authority of the City to authorize. He also recommends that the corporate authorities assess from a policy perspective the appropriate role of the City with respect to cultural arts given its other responsibilities.

On a question, Attny. Fintzen note that "corporate authorities" consists of the City Council plus the Mayor, while the City Council is just the alderpersons.

Discussion then revolved around whether the ordinance should be repealed and how best to grow the arts in Geneva as a non-home rule community. Admin. Dawkins noted that there are no other non-home rule communities with arts or other commissions. She noted that nothing new should be started while this issue is investigated. On a question of what will happen if the ordinance is repealed, Admin. Dawkins noted that the current CAC programming could cease.

On a question, Dir. Tymoszenko stated that the CAC started with SPAC and was adopted at the time by the City Council. Attny. Fintzen noted that the issue with the CAC lies in its programs. The authority is given for a cultural arts center, and programs and the spending of City funds would be authorized within the nature of such a center.

Dir. Tymoszenko noted that the City did not create the Geneva Arts Foundation. The Foundation was desired to solicit grants and donations from non-profits. It was also better for the Foundation to pursue an arts center. Attny. Fintzen noted that if a cultural arts center were established, employees could be hired to carry out the programming there but there would be limitations to doing so. The alternative would be a finding of economic development by the City Council which would result in increased economic development. On a question, Attny. Fintzen stated that generally, the City could set up and fund a cultural arts center. Dir. Tymoszenko noted that the CAC has many volunteers but there is a question of whether the public would want staff to be involved in a center. She stated that cultural arts have a positive impact on residents, visitors, and corporations. The question is whether the City should be involved in cultural arts and if so, what would its role be and should staff be devoted to it?

Mayor Burns noted that there was a consensus to draft an ordinance to repeal the Cultural Arts Commission ordinance. On a question, Attny. Fintzen stated that he would contact Attny. Sandack and look into whether the Illinois Attorney General or the Kane County State's Attorney's Office would provide advice regarding the propriety of the ordinance.

Public Comment / New Business

Cultural Arts Commission chair Tim Vetang commented that the CAC was a SPAC initiative. A citizen committee wrote the bylaws which were reviewed by the City Attorney. Under the ordinance and bylaws, the use of tax dollars for the CAC's programs was to be limited or not used at all which resulted in the need for fundraising. Events cost \$10,000-\$16,000 per event. The Cultural Arts Foundation was created because businesses missed out on matching donations because the CAC was not a 501(c)3 organization. The foundation opened a cultural arts center which operated for 19 months. Mr. Vetang stated that more than anything, the CAC does not want to lose the large number of volunteers who assist with the group's events and programming.

New Business

None.

Adjournment

On a motion by Ald. Paschke, the meeting was adjourned by unanimous voice vote at 9:25 pm.

- submitted by City Clerk Vicki Kellick
