

DISTRICT ATTORNEY BEGINS TOPEKA COUNCIL INQUIRY

*PATRICK HENRY ONCE SAID THAT LIBERTY IS NEVER SECURE AS LONG AS
GOVERNMENT DOES BUSINESS IN SECRET.*

The Liberty Sentinel, Dec. 13, 2007

FIVE MEMBERS ARE ASKED ABOUT POSSIBLE VIOLATION OF OPEN MEETINGS LAW

(The Topeka Capital-Journal) The procession into the district attorney's office began at 1:30 p.m. Wednesday. The last person didn't leave until well after sundown.

Each was accompanied by an attorney, and in one case two. Little was said publicly coming or going.

And so it was Wednesday as five members of the Topeka City Council, under orders of a subpoena, entered the office of Shawnee County District Attorney Robert Hecht in 45-minute intervals.

At the end of the day, Hecht confirmed for The Topeka Capital-Journal the five were questioned in connection with what he calls an "inquiry" into a possible violation of the Kansas Open Records Act.

"The inquiry is related to media concerns that there may have been a violation of the KOMA," he said.

The matter was connected to the city council's decision on Dec. 4 to approve the purchase of a second police helicopter.

Three Topeka City Council members acknowledged earlier that Councilman Brett Blackburn asked them to co-sponsor a proposal to authorize the acquisition of a second police helicopter in advance of the meeting in which the purchase was approved.

Michael Merriam, a Topeka attorney who specializes in media law issues, said those conversations appeared to violate a Kansas Open Meetings Act prohibition against "serial communications" between members of a public body.

Though no measure regarding a police helicopter was initially on the agenda for the Dec. 4 council meeting, the council voted to suspend the rules to add to the agenda a veto-

proof "communication" -- dated Nov. 13 -- to authorize the purchase.

Topeka Mayor Bill Bunten has opposed the purchase of the helicopter and vetoed a resolution adopted by the council in June authorizing its acquisition. The council failed on a 5-4 vote to override the veto -- one vote short of the six needed.

At the Dec. 4 meeting, five members of the council -- Brett Blackburn, Jack Woelfel, Jeff Preisner, Deborah Swank and Lana Kennedy -- voted on a "communication" placed on the council agenda authorizing the lease-purchase of an \$820,000 helicopter. Again, it was passed by the necessary five votes with the belief that a communication wasn't subject to a veto.

Hecht said he had received a request from Mayor Bill Bunten for a legal opinion from his office, or from the attorney general's office, on whether the mayor has veto power on the helicopter purchase.

Bunten issued a statement Tuesday that he had been advised by two attorney friends that the council's action legally amounted to adoption of a resolution, which is subject to mayoral veto, even though the document adopted by the council was described as being a mere "communication," which isn't subject to veto.

Bunten, who said he vetoed the purchase, declined to identify the attorneys who provided him their opinions.

Hecht was asked Wednesday whether he was one of the two, to which he replied, "I don't advise the mayor."

Each of the five subpoenaed council members -- Lana Kennedy, Deborah Swank, Jack Woelfel, Jeff Preisner and Brett Blackburn -- was accompanied into Hecht's office by at least one attorney. Blackburn had two.

As each emerged, they declined to answer questions put to them by a Topeka Capital-Journal reporter. In most cases they declined with apologies or expressions that they wished they were free to talk but that they had been advised against making public statements while the inquiry continues.

In an interview, Hecht said he likely will do more interviews and ask to see more documents. He expects the inquiry to last into January.

***Do you have an Open Government experience to share? E-mail it to
rgannon@kspress.com***

