



Austin City Council MINUTES For

SPECIAL CALLED MEETING
DECEMBER 8, 1982 - 4:30 P.M.
Council Chambers, 307 West Second Street, Austin, Texas

City Council

Ron Mullen
Mayor

John Treviño, Jr.
Mayor Pro Tem

Council Members
Mark Rose
Roger Duncan
Sally Shipman
Mark E. Spaeth
Charles E. Urdy

Nicholas M. Meiszer
City Manager

Elden Aldridge
City Clerk

Memorandum To:

Mayor called to order the Special Meeting of the Council scheduled for 4:30 P.M. She noted the presence of all Councilmembers.

EXECUTIVE SESSION

Mayor McClellan announced that the Council will go into Executive Session pursuant to Article 6252-17, V.T.C.S. to discuss Board and Commission Appointments - Section 2, Paragraph g.

BOARD AND COMMISSION APPOINTMENTS

The Council, on Councilmember Goodman's Motion and Councilmember Duncan's Second, approved the following Board and Commission Appointments. (7-0 vote) Community Development Commission, Donetta McCall and Nathan Ramsey. Dental Health Advisory Committee, Dr. Ed White. Austin Tomorrow On-going Committee, Laura Medea, Marsha Wright and Mark Mullen. Renewable Energy Resources Commission, Dr. Robert Russell and Leon Barisch. Construction Advisory Committee, Mary Benavides. Human Relations Commission, Gary Witt, Eunice Wyatt, Rolanda Pena, and Bob Bryan. Neighborhood Revitalization Commission, Victor Baez, Kate Johnson, Van Kane, William Casteel, and Robert Lee. Solicitation Board, Stuart Mc Donald. Community Education Consortium, Eva Lindsey. Electrical Board, Vernon Fowler, Virgie Camereo, and Walter Timberlake. Medical Assistance Program Advisory Board, Ed Callahan, William Sheffield, and Barbara Fly. Commission on the Status of Women, Frances Plotsky.

PUBLIC HEARING - STNP FINANCING OPTIONS

Mayor Mc Clellan opened the Public Hearing scheduled for 8:00 P.M. on Financing options for the South Texas Nuclear Project. Mr. Peck Young addressed the Council, "This evening I will present the official recommendation of the Electric Utility Commission. I would like to make some personal comments, and then there are three

members of my commission: Vice-Chairman Shudde Fath, and Commissioners Kochenski and Modine, who would like to make comments on this matter. On November 22 at our regular scheduled meeting, the Electric Utility Commission considered financing options for continued funding of the South Texas Nuclear Project on an interim basis. There is a memo dated November 23, which should have been communicated to you, but for the record, I am going to go through the action taken by the Commission as outlined in that memo. First, Commission Gutierrez moved, seconded by Commissioner Fairweather, that the Commission recommend that the City Council schedule a bond election, calling for authorization to sell additional 70 to 75,000,000 dollars in Utility System Revenue Bonds in order to protect the City's investment by continuing progress payments until a buyer can be found, and that the City continue to aggressively pursue a sale of its interest in STNP, including hiring a specific agent for that purpose; and that the City authorize further investigation into the establishment of a financial agency to provide funding to STNP until such time as the City's interest can be sold or retained. That motion passed 9-0, which I might add is an absolute, total vote of our Commission. A second motion was presented by Commissioner Kochenski, that the Commission urge the Council to pursue a very aggressive campaign in support of the bonds to make it clear to the public the necessity for passing those bonds. The motion was seconded by myself, and it also passed 9-0. Finally, Commissioner Faith moved that the Commission recommend to the City Council that the City file suit against Houston Lighting and Power and invite Corpus Christi and San Antonio to join us. Commissioner Gutierrez offered a friendly amendment which was accepted that the Council also consider filing suit against the appropriate Federal entities, in terms of the management and conduct of STNP. The motion was appropriately seconded, was seconded by Commissioner Modene, and was passed 6-3. Now, there is the official action of your advisory body. We again unanimously recommend an election be held, and we recommend unanimously, or we recommend by a 6-3 majority, that suit be filed against HL&P. I want to make it very clear in my comments that our Commission acted not in tradition, but in compliance with Article 7, Section 11, of the City Charter, which states in part, 'all revenue bonds issued by the City shall first be authorized by a majority of the qualified electors, voting in an election held for such purpose.' That language was incorporated into this document, which was put into effect some 30 years ago on January 1, 1953, and has never been subject to amendment. A spot check of election returns provided by the City indicates that revenue bonds in this City may have been voted on as early as 1920, and that there appears to be at least from the 1920's until today an unbroken 60 year history of permitting the voters of this City to vote on revenue bonds. What we have heard tonight is a suggestion that so-called tradition, which is incorporated in this City Charter, and not, I repeat, not superceded by state law. The state law referred to in the City's memo, which was distributed for Mr. DeLaRosa to the Council and Commission, I checked this citation. The law is permissive, not requiring. The City is permitted to issue bonds if it wished, without voter approval. It is also, therefore, permitted to ask voter approval. It is nothing in that statute that supercedes our City Charter, or our City Charter would have been dead 30 years ago. One legal opinion by a Court, which does not have jurisdiction in this City, does not supercede the Charter of the City of Austin, not at least from the law school I attended. Our Commission considered, I think, very carefully, what are the three major options. Option No. 1, default, would leave Austin trapped in the South Texas Nuclear Project without anything to sell. It would adversely effect our financial position of the City, and I cannot believe anyone in good faith would seriously suggest that in any kind of a campaign to authorize sale of bonds, that someone would be so silly as to campaign on behalf

of default. When Mr. Scheps was asked who he thought might, he didn't seem to be able to provide a candidate. Secondly, the question of a rate increase, we clearly did not feel was justified at this time. As long as there is available to us the option of long term bond financing of this debt or any debt incurred by our Electric Utility, our Commission would never in good faith recommend any kind of a rate increase certainly of the magnitude indicated by Mr. Peterson. Finally, issuing bonds without voter approval. That was discussed briefly, and on that I will make my comments and let other Commissioners make theirs. First, it is a violation of the City Charter. At least as we understood our oath of office as Commissioners of this City, it was our obligation not only to uphold the laws of the State of Texas and this country, but also this City, and there is no more fundamental law than this Charter. I can think of nothing more irresponsible, undemocratic or arrogant than to declare that Charter null and void by action of the Council or bureaucratic fiat. Secondly, it is clear to me that there will be a law suit, should this Charter be violated. That law suit would bring about, I believe, personally, a delay that could easily take us past the point at which we could sell those bonds to meet default. Mr. Scheps blithely talks about that being a nuisance suit. I would question where civil litigation now takes three years to move through the District courts, how he expects to move this case, which I assure you would be appealed well beyond the District Court level, faster than three years, or even faster than the 90 days he needs to sell his bonds. Secondly, I honestly believe that if we went into litigation, we would find the cost of that litigation, especially in line of our record of cost of the South Texas litigation, being now 1.1 million dollars and we still haven't sued anybody but Brown and Root, we would find the cost of that litigation to exceed the cost of simply doing what the Charter requires us to do, which is to hold an election. And then at the end of our voters our of the right of state their preferences about their own purse strings. I would submit that if this City Council or this City staff wishes to repeal provisions of the City Charter, that it is appropriate to place repeal of such provisions on the ballot in April when all of you all stand for election, and ask the voters whether or not they wish to have their rights to vote on their revenue bonds revoked. I do not think it should be done by bureaucratic Council or newspaper fiat. I personally will campaign to prevent default, and to pass these bonds as our commission recommends you put them to the voters. I will also campaign for bonds for Fayette 3, and any other worthwhile electric generation projects that are presented to my commission. I have done so in the past and I'm pledging to you to continue to do so in the future. But I will fight to the death any effort by a bureaucrat or elected official to take away the voters right to pass on their revenue obligations in this City. I think that the Mayor, Mr. Scheps, the paper, the business elite in this City, think the people are too confused to be allowed to continue to mankey with the revenue purse strings of this community. I believe it is their intention and say so tonight, to remove forever the people's right to issue or not issue bonds for water and wastewater, electric or any other project that requires revenue bond financing. Specifically, I am aware that the editor of the Austin newspaper has always thought that you ought to do business over a drink, particularly if the drink was at the Headliners' Club and he clearly seems to think that's where the City's financial business should be conducted. I for one do not agree. I strongly feel that the voters of this City will not agree, and I ask the City Council to put it to the voters whether or not they would seriously contemplate defaulting on all their bond obligations, and putting themselves in the position of financial disaster, or whether or not the voters would, as they did last September, less than 60 days from this date, would responsibly and intelligently pass bonds to allow us to participate in the South Texas until such time as we could sell it. I ask the Council therefore, to adopt the recommendations of my Commission, and I will yield the floor to my fellow Commissioners."

Mayor McClellan commented, "Mr. Young, may I in all sincerity ask you a question, please sir. Let me preface it with a few comments, and then I'm really interested in your opinion on this, and I appreciate your very diligent, very dedicated work as I do all of the Commission members. We sometimes disagree on issues, but I respectfully disagree with you. I don't argue by the way, that that is not permissive legislation. My point is though, the City, I am confident that the City legally can issue revenue bonds without voter approval. It is not mandatory that they do so, but they can as every other major City does in this state, issue revenue bonds without voter approval. Ft. Worth was the last one to do away with taking revenue bonds to the voters. Go bonds, tax-related bonds must go to the voters. Secondly, I was interested in hearing you saying that it is not an option, and I agree with you. That that rate increase, as Mr. Peterson has laid out, which would be 42% increase just for South Texas in less than a year is not an option, and I believe I have heard you say that. I totally concur. And obviously, your entire commission about the City protecting our investment with progress payments until a buyer can be found, and we all are most aggressively seeking a buyer for all or part of the South Texas project. So my question to you is this, has your commission had any discussion and/or any formal action, and also I would be interested in your personal opinion, either in conjunction with or separate and apart from any commission discussion about when you put an issue out to the voters, obviously, they have an option voting yes or no. My question to you is if the voters do not do what you all are recommending that they do, and what we would all recommend they do, which is to authorize additional bonding authority so that we can protect that investment, but if however, a majority of the voters vote "no" with whatever percentage turns out for an election of this type, what then do you recommend that we do?"

Mr. Young said, "Our Commission has not formally discussed that, and I read you the formal recommendations of our commission."

Mayor McClellan stated, "That's why I asked you your personal opinion, too."

Mr. Young responded, "On the basis of the Commission, I can't respond. My personal response would be this. It is, first of all, I simply do not believe in good faith that we can make the assumption that after almost 60 years of voting on bonds, that for some reason in January of next year, the voters are going to go rushing out and in mass vote to destroy their bond rating, I simply cannot believe that the hypothetical situation of failure of bonds which prevent the City's default, is realistic. Frankly, however, should the voters determine, which I believe they have a right to do, that they do not wish to sell bonds and avoid default, I don't think the Council would have any other option other than increasing rates."

Mayor McClellan asked, "So at that point, you would personally support a 42% increase?"

Mr. Young said, "At that point, I would support a 42% increase in rates."

Mayor McClellan then asked, "Well, then let me ask this question. If a majority of this Council determines that we should have an election on additional bonding authority, I for one do not think that if that goes down, we are playing a what if game. I absolutely hope you are correct, Mr. Young, and everybody else is that additional bonding authority would be approved, but if it is not approved, I for one do not think that we can assume, because we let them vote no, would vote yes on an increase in their electric utility bill to cover the payments on the South Texas Project. So if this Council in its wisdom, determines that we should

have an election for additional bonding authority, I for one are going to be asking that we hold that election on January 15, when you can put a plebesite question on the ballot, and I have asked for the wording and have it worded here. We just were waiting for the figures from Mr. Peterson. I think we ought to have an additional question on that ballow saying, 'Would you vote to increase your electirc utility bill 22% immediatly, an additional 20% next October 1, to cover the payments for the South Texas Nuclear Project, Yes or No.' Because if you don't do that, I don't think it is a fair assumption, that because people would vote no on bonding authority, that they would vote yes on an increase in their electicial utility bills."

Young said, " Well, to be frank with you Mayor, obviously a vote on electric rates is not going to pass, but the wording of the ballot is not something my Commission has acted upon, and of course, I am not going to enter into that debate. My suggestion is though that a simpler and cleaner thing might be to put on the ballot a proposition phrased 'to avoid default on the South Texas Nuclear Project, authorizing the City to sell 70-75 million dollars in revenue bonds, to continue progress payments for one year.' and without having to do political gymnastics of having, fi yes, then vote no on 2. If no, then vote yes on 3. That what you ought to put is a straight up vote on default. Because, look, this is what we are talking about. Mr. Shceps holds his head in pain, and yet in the name of default, he wishes to throw the City Charter in the garbage. I would submit to him that if it is as dire as he says it is, he ought to be willing to go to the voters with that circumstance, and see if they are stupid enough to want ot vote no. I have no reason to believe, haveing been involved in elections in this city literally since I was 6 years old, that the voters in this town are so dumb that are going to get up in masse and to vote to default on all of their bonding authority, and this kind of mental gymnastics to try to use as a smoke screen to end the right of the voters to vote on the revenue bonds is a lot of What we need to do is to move forward, have an election, put it to the voters exactly the way it is supposed to be, and I am assuming our bond council is telling us the truth, and that is, if we do not authorize these bonds, we cannot sell this project ever, because we will lose anything sellable and we will probably lose the ability to sell other bonds, including tax bonds, and if that is the truth, put that to the voters and let the voters decide, and you don't need three ballot propositions. You need one, and it needs to say, 'to avoid default...so much money...yes or no' and let's find out whether the people in this City are as stupid as some people seem to think they are, whether or not they have the intelligence to vote responsibly, like they did just 60 days ago."

Mayor McClellan answered, " I will use different terminology from yours, but I would respectfully disagree that anyone is trying to imply that the voters are stupid, but I think what we have here is a situation where in all reality the City has no options. Now, let me point out one other thing, an election costs \$40,000. The commission, I believe, has recommended separate elections on Fayette and the South Texas Nuclear Project, \$80,000.00 simply to hold them. That is not including any costs that go along with that. If we had some real options to put out to the voters, perhaps that \$40,000.00 would be justified."

Mr. Young then added, " Mayor, we have the same options we had when I worked on a South Texas Nuclear referendum in 1973 to get us into that plan. We have got the same situation we had at that time, when we passed Fayette and Decker. We have got the same situation we had in September, when everyone was running around talking about how potties were going to overflow if we didn't pass water bonds. The point is that we have got the same situation every thime we get bonds. The only

Councilmember Deuser stated, " I have asked the City Attorney to estimate what it would cost to go into Court and handle this so-called nuisance suit. And I wonder if you might present some kind of back of the envelope estimate of what that might involve."

The City Attorney answered, " That's very difficult to do, because like a year ago, if you had asked me how much we would have spent for the STNP, I probably would have told you that we would have spent a million point one. It is certainly conceivable that... "

Deuser said, " Certainly \$40,000.00 is not outside the realm of possible cost to handle..."

ADJOURNMENT

Council Adjourned its meeting at 10:05 P.M.