

JEA sale negotiations paused amid conflict of interest questions, according to memo from City's ethics office

By Christopher Hong

Posted Nov 15, 2019 at 5:38 PM

The city's ethics director Carla Miller recommended the state provide an opinion after she reviewed the contracts of JEA's senior leadership team.

JEA's privatization negotiations are paused until the Florida Ethics Commission determines whether financial benefits in the contracts of the utility's senior officials are a conflict of interest that prohibits them from participating in the negotiations, according to a memo from the city's ethics office.

Carla Miller, the city's ethics director, recommended last month the state provide an opinion on the potential conflicts of interest after she reviewed the contracts of JEA's senior leadership team, according to a memo created by Miller that includes a timeline of events surrounding the issue.

JEA has refused to say who is on the negotiating team.

RELATED | Read more about the potential JEA sale

Miller said on Friday that the issue at hand is a provision entitling the utility's senior leadership team, which is made up of CEO Aaron Zahn and 12 other members, to post-employment consulting jobs, and whether those benefits would be the subject of negotiations any of the members participate in with potential buyers of the utility.

"You don't want people negotiating the contract if they have a personal interest. If any of the aspects of what they're negotiating benefits them personally, that's what you would look at," she said.

On Nov. 1, a JEA attorney told Miller that the utility "barring any emergency, would not proceed with substantive action" until the state has issued an opinion, according to Miller's memo.

Kerri Stewart, a JEA vice president, said on Friday that their process "was not on hold" and that the utility plans to proceed with all aspects of the negotiations except discussions about employee benefits.

"The [process] is not paused. We are moving forward, and we are on track with our timeline," Stewart said.

JEA is reviewing nine proposals it received in response to a formal invitation it issued earlier this year for proposals to purchase or otherwise privatize the utility.

Zahn has said the utility faces serious financial troubles in the future, and that privatization would allow the utility to better find solutions to those problems.

Selling JEA has proven to be a highly divisive political issue -- and an unpopular one, according to a recent UNF poll.

Jacksonville City Council members and prominent civic leaders have criticized JEA's handling of the issue, questioning the veracity of Zahn's justification for pursuing privatization and criticizing the negotiating process as opaque and "legally flawed."

Miller said on Friday that the all 13 members of JEA's senior leadership have post-employment consulting agreements in their contracts.

Zahn's consulting agreement entitles him to a year of monthly pay equal to his "total compensation statement" for the previous 12 months if he is terminated without cause. That amount currently stands at \$520,000.

The Times-Union requested more than a week ago copies of the other 12 senior leadership team members to learn the terms of their consulting agreements.

According to Miller's memo, Miller recommended during an Oct. 16 meeting with JEA officials and attorneys with the city's Office of General Counsel that an "extensive analysis" be done on any JEA employees who would join the negotiating team.

At the time, JEA had not named who would be on the team and insisted that they would not publicly disclose the members of the team, according to the memo.

"It was the Ethics Director's view that they could not be kept confidential ... and public policy would favor disclosure to the citizens. A discussion on the law and public policy took place," Miller wrote.

Several days later, a JEA attorney informed Miller that the utility would disclose the names of the negotiating team members, according to the memo.

A JEA attorney soon after provided Miller with a conflict analysis for three potential negotiators, according to the memo. Miller said the attorney indicated that JEA was asked to perform the review.

Miller wrote that the attorney asked her on Oct. 23 to review the analysis so that JEA could appoint negotiators. Miller wrote that JEA's analysis was incomplete and that she told JEA's attorney "additional inquiries" needed to be made.

On Oct. 28, Miller reviewed the contracts of the members of JEA senior leadership team. After doing so, she recommended to JEA and the OGC that the state's ethics commission should review the situation.

On Nov. 1, a JEA attorney told Miller that the utility had decided who would negotiate the potential sale but the utility wouldn't proceed with substantive action until the conflict review by the state was complete.

On Nov. 13, the OGC formally asked the state ethics commission to review any potential conflicts. On Nov. 14, JEA provided Miller with written confirmation that no negotiations had taken place and that none were scheduled.

Stewart disputed some of Miller's version of events, saying that JEA identified the potential conflicts of interest on their own and that the Office of General Counsel recommended the state provide an opinion after Miller "punted" on making a determination at their request.

Christopher Hong: (904) 359-4272