

NATE MONROE

Nate Monroe: The JEA echo chamber

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COMMENTARY | A remarkable alignment of personal and professional relationships within JEA in 2019 appears to have powered the questionable decision-making throughout the utility's privatization push that is now the subject of several investigations and legal proceedings.

This is key to understanding how and why JEA officials got as far as they did in crafting a bonus scheme with a potential payout of more than \$1 billion, despite having at their disposal a battalion of public and private attorneys. The upper echelons of the agency had become an echo chamber.

Consider:

- Herschel Vinyard, JEA's former chief administrative officer, had come to the agency directly from Foley & Lardner, one of the two major private firms assisting JEA with the sale. Christopher Kise, a Foley lawyer and well-known figure in Florida Republican politics, claimed internally to his colleagues that his personal relationship with Vinyard was the sole reason Foley was hired — a claim he hoped would land him a bigger chunk of the fees for JEA work, according to an internal Foley memo. And Vinyard himself told city attorneys under oath he personally recommended hiring Foley.
- Ousted CEO Aaron Zahn was college friends with one of the attorneys working closely with JEA at the second major firm guiding JEA through the privatization process, New York-based Pillsbury.
- Former JEA chief legal officer Lynne Rhode, in a previous job, had represented Zahn's former company, BCR Environmental (he claims he did not personally know Rhode at that time).
- Alan Howard, one of the JEA board members who voted to allow Zahn and his executive team to explore selling the utility to a private operator, and to pursue the bonus plan, later

landed a consulting contract to help with the privatization effort.

- Camille Lee-Johnson, another board member, headed the board's compensation committee and was titularly responsible for overseeing the controversial bonus plan as its administrator. She also claimed membership in the Young Presidents' Organization, a group that touts itself as “fostering a safe haven of trust, respect and confidentiality for our community.” Zahn is also a member of YPO — he was a board member and membership chair of the local YPO chapter through August 2019 (JEA paid for his \$8,000 membership dues).

And later, at least two others who claim membership in YPO were added to JEA's board.

- The other JEA executives were, in their telling, either ignorant of the workings of the bonus plan or misunderstood it, or out of the loop of Zahn's inner circle. And in either case, with potential payouts of tens of millions of dollars if JEA had been sold and the bonus plan finalized, they faced potent conflict of interest.

This constellation of relationships and conflicts remained unclear or undisclosed until Zahn's termination and the subsequent series of employment and City Council investigations began compelling testimony from JEA officials and the production of hundreds of thousands of pages of records.

They show an agency decision-making process almost totally insulated from outside observers and professionals who might have thrown up road blocks or raised questions at key moments and instead placed in the hands of friends, past colleagues and people with consulting fees (or a future bonus) on the line.

The few times those outsiders did peer into the process, the results were rarely flattering.

In May 2019, for example, Nixon Peabody, a firm JEA had long used prior to Zahn's executive team coming on board, raised serious red flags about the bonus concept Zahn had been kicking around. The firm said the plan would create an “unresolvable dilemma” because of conflicts of interest the plan would create and its failure to serve a legitimate public interest.

Faced with this unfavorable opinion, JEA officials appear to have simply cast it aside and fished for other legal opinions — from Foley and Pillsbury.

Attorney general letter

When attorneys in the city's Office of General Counsel began pushing back on legal issues surrounding the bonus plan, JEA tried to go over their heads. They sent a letter in October 2019 to Florida Attorney General Ashley Moody requesting her office to find the bonus plan legal — an idea that in concept would be fine, as long as the letter and representations made to Moody's office were truthful.

But the letter, signed by Rhode and written with help from Foley, mentioned nothing about JEA's plan to private, settling instead for an amusing euphemism that utility officials were "exploring multiple scenarios of operation and investment." Although JEA officials and lawyers understood the bonus specifically as a payout that would be made after a sale, there was simply no mention of that.

That also means there was no mention about the potential massive payouts possible if JEA had been sold.

The letter said the "plan administrator" was responsible for determining the level of participation each employee was eligible for — in theory the plan administrator was the JEA board member who chaired the compensation committee, who wouldn't themselves be able to participate in the plan. But the letter didn't mention lawyers were already working on a document relinquishing the oversight power of the plan administrator to Zahn — who was going to be a participant in the plan.

The letter also represented that the city's Office of General Counsel "confirmed" the JEA board's authority to green light the plan, but all OGC had done was simply write a memo asserting JEA had the authority to craft a *legal* plan, without evaluating any aspect of the actual scheme executives had concocted. In fact, at the time, city attorneys were uncomfortable with the plan — despite representations made in the letter that " ... we believe the (bonus plan) complies with the law ... "

The workings of the bonus plan were opaque — it took City Council auditors some time to figure it out, and even Foley attorneys found they had made errors in interpreting it — so it was a stretch to assume the Attorney General's Office would be able to figure this out without relying on the representations made in the letter — or perhaps without some lobbying. Kise, the Foley lawyer tied in with Republican politics, met with Moody's office about the request.

Nothing ever came of the attorney general letter because the former City Council auditor, Kyle Billy — another outsider with no skin in the game — issued a report detailing the massive payouts and the questionable workings of the plan, a development that created a public firestorm around the plan and Zahn.

Recently obtained documents make it clear even some of JEA's own lawyers at Foley had serious concerns about the bonus plan and other decisions the executives were making, and that in at least some cases utility officials were not listening to their own consultants.

It's not clear Foley ever disclosed those concerns to their client — including the JEA board of directors — but the troubling likelihood is that it wouldn't have mattered even if they had.

Nate Monroe's City column appears every Thursday and Sunday.

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