

1 CITY OF PROSPECT, KENTUCKY
2 CITY COUNCIL MEETING
3 SESSION 2
4 MARCH 18, 2013

5 COUNCIL MEMBER TUCCI: Okay. We're
6 back in order, and we'll turn the meeting over to
7 city counsel.

8 CITY ATTORNEY POTTS: Before we go
9 through the tabulation and announce the result, I
10 want to advise the council that since the last time
11 we met, I have again discussed this situation of
12 the number of votes required to elect a -- a mayor
13 with the Kentucky League of Cities and with the
14 Office of the Kentucky Attorney General.

15 And I have been advised by -- in my
16 discussions with both of those attorneys for -- in
17 both of those organizations that they concur, in my
18 opinion, that it is unfair to have two standards for
19 the election of a mayor. And that in the opinion of
20 an Assistant Attorney General, no court in this
21 state would have any trouble in voiding an election
22 where two standards were established by a city.

23 I would urge you to reconsider your decision
24 to have a vote of three members of the city council
25 able to elect one of your own as the mayor, and

1 have a requirement that four of your votes would
2 be required to elect someone who is not a member
3 of this council.

4 MR. SPEAKER: No comment?

5 COUNCIL MEMBER BOWLING: Yeah,
6 I'd -- I'd like to make a comment. I -- I guess I --
7 I'd like to talk about a little bit how we came to
8 this conclusion since I know some of the -- quite a
9 few people weren't here last week, and I know a
10 lot of people read it in the paper. And at face
11 value, it -- it -- it's -- it's -- it's un -- easy to
12 understand how it appears unfair.

13 So let me explain to you how we came to this
14 conclusion, and -- and part of what went into this.
15 When the mayor announced his resignation, there
16 was a small group of council people who said,
17 "How in the world is this going to work?"

18 And we got with Grover right away, and we
19 said, "Grover, how -- just numbers-wise, if you run
20 the numbers and -- and you know that" -- at -- at
21 that time there was five council people that were
22 running. Now, a couple of us have taken our
23 names out. Bill's no longer in it and I'm no longer
24 in it, but you still have four of the -- of the six
25 running. So if you just do the math, it -- it gets

1 tricky.

2 So we took -- we told Grover, "How are we
3 going to do this? What is the procedure?" And
4 Grover, along with the Kentucky League of Cities,
5 says, "Unfortunately, there is zero out there.
6 There's no precedent. There's no state law.
7 There's nothing." And the Kentucky League of
8 Cities has been through this with -- with every city
9 in the state over the last X amount of years, and
10 they said, "This is unprecedented."

11 Now, the good thing is -- is the reason it's
12 unprecedented is because you have so many
13 people that want to run. Most of the cities that we
14 contacted to try to find help, they couldn't find
15 people that wanted the position. Sometimes they
16 had one person. Sometimes they picked people
17 that didn't want to be it. So it's a good situation;
18 nevertheless, we still find ourself in this situation.

19 Grover's been very honest from the beginning
20 by saying, "I wish I could tell you without a doubt
21 that it was four or it was three." He said, "I'm
22 going to be honest with you from the start. I can't.
23 I'm going to give you my opinion."

24 And he also -- just like he said last week, he
25 was extremely honest, and he says, "Not only do I

1 welcome that you go outside to the Kentucky
2 League of Cities and other entities, I suggest it.
3 All I want to do at the end of the day is -- is to
4 find the right answer here."

5 Now, I'm doing to give you-all several of the
6 things that we had considered. Remember, there's
7 nothing out there as far as state law on how to do
8 this except they gave us 30 days to do it. Council
9 people can't vote for themselves. And then the
10 final one, mayor must be elected by a majority.
11 That's the three things they gave us.

12 So we went to the book, and we looked up
13 "majority." It's a very simple four-word definition.
14 "Number of votes cast." That is the defini -- the
15 legal definition of majority. It's not the number of
16 people present. It's not the number of council
17 people, but the number of votes cast. That was
18 one.

19 The second one was: If you required a
20 council person to get four of five votes, that's
21 80%. There isn't anything on the federal level, the
22 state level, or the local level in history that has
23 ever required more than 66.66%. That is a 2/3
24 majority, and that is required for things such as
25 overriding a president's or a governor's or a

1 mayor's veto or constitutional amendment.

2 So we're supposed to believe that they want
3 80% majority, which would be unprecedented, but
4 they don't even mention it. We're just supposed to
5 assume that. That was two.

6 Now, the third thing is when we -- if we were
7 to elect a mayor from the council, let's say we
8 elect Stuart Miles, and he comes into the -- the --
9 the chair of mayor, our next duty, then, is to elect
10 a council person for Stuart's spot. Now,
11 everybody agrees that the majority will be three,
12 then, because Stuart's not there.

13 So part of our reasoning was if -- if Stuart's --
14 if Stuart Miles, excuse me, is -- is here but can't
15 vote, or if he's at home and can't vote, what is the
16 difference? That was a -- a-- a determining factor.
17 In the -- in the -- in the history of Prospect,
18 whenever a council person is not here, the
19 majority changes. It always has. It went to three.
20 Instead of needing four, it's gone to three. So
21 it's -- it's -- it's extremely tricky. It -- it's --
22 there's nothing cut and dry.

23 And then the last thing I'll say is -- is I -- I
24 continue to hear that the opposition says there has
25 to be a level playing field. Well, if -- if you

1 require a council person to have four of five votes,
2 that's 80%; and if you require someone on the
3 outside to have four of six, that's 66.66%. 80%
4 and 66% aren't close. They're nowhere near to a
5 level playing field.

6 If you require a council person to have three
7 of five, that's 60%. 60% and 66% are much closer
8 than 66 and 80. So if your argument is a level
9 playing field, then -- then requiring a council
10 person to have three or [sic] five is certainly more
11 equal than -- than the alternative.

12 I'm not in this. I -- you know, my hope is --
13 and the reason I dropped out, I said in my email,
14 my hope is -- is to find the best mayor for Prospect
15 and do it in the less -- least contentious manner
16 possible. I just want to get it right.

17 You know, it's -- it's -- we've been advised by
18 a lot of people. I know -- you know, I just talk to
19 the Kentucky League of Cities again. I -- I don't
20 know what the miscommunication is, but they --
21 they still were the -- of the belief that three votes
22 is -- is correct.

23 So I just wanted to give a little bit of
24 background, because I know a lot of people just
25 read it in the paper. And, at face value, you know,

1 it -- it -- it -- it does look a little bit questionable,
2 but there is some stuff that goes into that. So I --
3 I -- I just wanted to mention that.

4 COUNCIL MEMBER MILES: And I -- I
5 guess I would be the opposition, along with Ms.
6 Tucci, and I'll explain my thinking on this.

7 The first is we pay for a city attorney for a
8 reason, because none of us here are lawyers.
9 Sandra was a lawyer. I don't know if you -- are
10 you still a practicing attorney?

11 COUNCIL MEMBER LEONARD: No.

12 COUNCIL MEMBER MILES: No; okay.
13 So none of us are practicing attorneys, and we
14 hire our attorney for this reason. It's -- it's our
15 attorney's job in -- in legal matters to give us
16 advice. And, as Sandy said, in -- in her time on
17 being here, we've never not done that.

18 My other problem was -- is that we were doing
19 it in a situation where, at the time, three of the
20 four people making that decision could profit to
21 the tune of \$44,000 a year for making it. And
22 whether it's legal or not, it looks bad.

23 The third thing is -- is that if there's a
24 situation where a person is going to be
25 disadvantaged when a rule is being made, I think

1 the person making the rule should be the one
2 disadvantaged, not the person not making the rule;
3 and, therefore, I think if there's some advantage
4 to be had, the advantage goes to Mr. Comer,
5 because I think all of us being on the council
6 already have an advantage just from knowing
7 everybody here; and maybe in some instances it
8 might be a disadvantage. I don't know.

9 But -- but that is my thinking and reasoning. I
10 just think it opens up the mayor to -- as our
11 attorney had said, it opens the mayor up to being
12 challenged legally; and depending on when that
13 challenge happened, if it happened a -- a month or
14 [sic] now or two months from now or three months
15 from now, it's a ticking time bomb, in my mind,
16 that, if it happens, everything that mayor did is
17 totally undone, and we've got to come back and fix
18 it again.

19 And -- and none of the people who were giving
20 advise on the other side, to my mind and -- are
21 putting their professional malpractice insurance on
22 the line in making that decision. They're not going
23 to come and pay money for us to fix this problem if
24 it blows up on us.

25 Grover is our attorney, and Grover is taking

1 that responsibility. And Grover's the one putting
2 his neck on the line, and Grover has made a
3 decision.

4 And -- and -- and as I said, if you couldn't
5 hear me before, regardless of whether we change
6 it or not, I'm not going to accept the position
7 unless I get four votes, because I think to do
8 otherwise would be reckless.

9 COUNCIL MEMBER BRAB: I want to say
10 one thing, and -- and as you all know, I've been
11 around Prospect now for 25 years. I was an
12 executive in a New York Stock Exchange listed
13 companies. I was on boards in New York Stock
14 Exchange listed companies. And this is the first
15 time in all of the time that -- in the last 35 years
16 that I've ever come across a situation where you
17 couldn't really put your -- hang your hat on one
18 thing. It's just -- there's nothing out there.

19 Grover, you and I have had five or six
20 discussions, and -- and we've really tried to, you
21 know, find a solution to this that would be
22 amenable to everyone. I just don't think we're
23 going to get there.

24 One thing I want to expound upon on what Rob
25 said. The only thing that I'm aware of in the

1 United States where there is a vote required that
2 requires 80% of the voting members, the only thing
3 that requires an 80% or close to an 80% is a
4 constitutional amendment. Everything else
5 requires 66%.

6 If you want to impeach a president, if both
7 houses want to impeach a president, it's 66%.
8 If you want to overturn a presidential veto, it's
9 66% -- 66.67%; okay? The only thing that requires
10 the size of -- of majority that is being talked about
11 here of a four of five vote is a constitutional
12 amendment, and that is -- I could find nothing
13 else.

14 The other thing I want to say, and -- and I
15 voted with the people -- the other council members
16 who vote for the three versus the four. I ran for
17 this office, you know, to make a difference. The
18 salary or the compensation we get for being
19 council members I turned down. I removed myself
20 from the mayor's race because I thought this was a
21 big enough mess as it was, and the citizens of
22 Prospect don't under -- don't deserve that.

23 But Stuart brings up the issue of the \$44,000.
24 In one -- in one sense, okay, if I was going to be
25 mayor, I'd turn it down, just as I think Mr. Evans

1 said that some of the other mayors have.

2 You can't buy me for \$44,000, folks; okay?

3 And I don't think you can buy anybody on this
4 panel for \$44,000. And in a way, I'm offended by
5 anybody making the inference that you could buy
6 anybody on this panel for \$44,000.

7 So my point of view is I'm not in it. I've
8 looked as hard as I could at everything I could,
9 and there is nothing, nothing, that points to that
10 you need four. It's simply an opinion. Thank you.

11 CITY ATTORNEY POTTS: Just a -- a -- a
12 comment on the issue of five versus six. The
13 statute says that the person who is on the council
14 may not vote for himself or herself, but that does
15 not reduce the number of votes. It does not
16 reduce the size of the council.

17 The Kentucky Open Meetings law, which I
18 looked at recently on this point of what is an
19 action taken, because it was never -- I couldn't
20 find anything else. And an action taken under the
21 Kentucky Op -- Open Meetings law is KRS
22 61.805(3), "Action taken" means "an actual vote by
23 a majority of the members of the governmental
24 body." That doesn't say by a majority of the
25 members of a governmental body including -- or

1 excluding those who are prohibited by another
2 statute from voting.

3 What I suggest to you tonight is that -- let's
4 seek an opinion from the Kentucky Attorney
5 General. Let's see what the Attorney General says
6 should be the number that should be used for this
7 purpose.

8 I've talked to the AG's office. They
9 understand our time crunch. They have agreed
10 that if we get them a request within the next 24
11 hours, that they will have us an opinion within
12 sufficient time to allow us to have an election that
13 will at least be in accord with the Attorney
14 General's opinion.

15 I don't know what that opinion is going to be,
16 because the person I talked to today wasn't the
17 guy that was going to write the opinion. So I don't
18 know what it was going to be, but I -- I think that,
19 for purposes of going forward, it would behoove
20 the Prospect City Council to consider asking for an
21 opinion on an expedited basis, so that when the
22 vote is taken; we have a reasonable assurance
23 that we are in compliance with the Kentucky law.

24 Again, for those of you who are lawyers out
25 there, we know that Attorney General's opinions

1 are not law in Kentucky; however, they are, in
2 fact, an opinion of the Attorney General as to what
3 the law is. And that would certainly be an
4 independent source to make that determination.

5 COUNCIL MEMBER SCOTT: Well,
6 Grover, as -- as we bought -- as we brought out in
7 the last meeting, for folks who weren't here last
8 week, we did look to the Kentucky League of Cities
9 that has a legal department, and they gave us their
10 opinion. It's three.

11 CITY ATTORNEY POTTS: Well, I -- I --
12 as I re --

13 COUNCIL MEMBER SCOTT: And -- and
14 we've mentioned that several times.

15 CITY ATTORNEY POTTS: And -- and I
16 have told you --

17 COUNCIL MEMBER SCOTT: So why --
18 why are we searching and searching for --

19 CITY ATTORNEY POTTS: Well, the
20 Kentuck -- Kentucky League of Cities has no legal
21 standing, period.

22 COUNCIL MEMBER SCOTT: Uh-huh.

23 CITY ATTORNEY POTTS: Okay? They're
24 a group of cities, just like we are a member of that
25 group, but it is not a source for any type of legal

1 decision making. They can only under -- they can
2 only make recommendations to you.

3 The Attorney General has a civil division, and
4 part of that civil division issues opinions by the
5 Attorney General, published opinions of the
6 Attorney General.

7 COUNCIL MEMBER SCOTT: Well, which
8 is not law.

9 CITY ATTORNEY POTTS: Which clearly
10 is not law.

11 COUNCIL MEMBER SCOTT: Right.
12 Right.

13 CITY ATTORNEY POTTS: I just said
14 that. It's not law.

15 COUNCIL MEMBER SCOTT: Okay.

16 COUNCIL MEMBER MILES: But it
17 certainly gives us cover. It gives us a -- a place
18 to point to if we have to defend this decision. And
19 I think it's a very prudent thing to do, and I would
20 be in favor of that.

21 COUNCIL MEMBER BRAB: I would be in
22 favor of that if we have the Attorney General look
23 at the entire process, including the ranking system
24 and the weighted voting that we're going to do
25 before we get to the final two, because I've been

1 advised by legislative aides to our Congressman in
2 this area that neither one of those stands the test
3 of water.

4 So if we're going to seek an AG approval or an
5 AG opinion, we need an opinion on the whole
6 thing, because, listen, we can sit here and say it's
7 four versus three and the AG says it's four or
8 whatever, and somebody else can challenge the
9 process before we even get to the four or three.

10 So if we're going to go that far, if we're going
11 outside this council for an independent legal
12 opinion, we need a legal opinion on the entire
13 process.

14 And I want to tell you folks, everybody on this
15 panel agreed, and I think everybody in this -- in
16 the audience agrees with me on this: We do not
17 want this decision to leave Prospect. Is there
18 anybody who wants this decision to leave
19 Prospect?

20 [no audible response]

21 COUNCIL MEMBER BRAB: Didn't think
22 so. We've got a problem here, okay, and we
23 haven't got a good solution. But I would be for an
24 AG opinion if we review the whole matter;
25 otherwise, I'm not going to go with that.

1 CITY ATTORNEY POTTS: Well, I think
2 since we've determ -- since there are only now
3 four people running, I think the only issue that we
4 really need to -- I think you can even remove the
5 ranking from that process, and the only issue you
6 have then is the order of voting.

7 COUNCIL MEMBER BRAB: Well, it's a
8 weighted vote. The process, as we approved it at
9 the last meeting for the first round of voting, there
10 would be a weighted vote and there would be
11 eliminations. And from my conversations with the
12 legislative aides and other people, that is illegal.

13 COUNCIL MEMBER MILES: Is it illegal
14 because the people voting would be people who
15 are -- have their name in the hat? Is that the --

16 COUNCIL MEMBER BRAB: You get one
17 vote. You don't get more than one vote.

18 COUNCIL MEMBER LEONARD: That's
19 right.

20 COUNCIL MEMBER BRAB: That's the
21 problem. So my whole point with this is: If we're
22 going to seek outside legal opinion, we're going to
23 go book to square one and have the whole thing
24 reviewed. And I want everybody to under -- that's
25 what I'm going to say. I -- I mean, I'm just one

1 vote on this council.

2 COUNCIL MEMBER MILES: Well, I have
3 no issue with it. And -- and I had suggested --
4 from the beginning, I voted against the ranking.
5 And I said we could just put a number in the hat
6 and draw lots to see who is voted on first.

7 And the process is -- is that we vote for each
8 person. So if you get four on the first person, you
9 don't just stop there. You go through, and the
10 person with the lowest votes is taken out of the
11 group; and then you do it again until you get to
12 two people.

13 And then whoever gets the most votes but at
14 least -- again, it's the number now which is the
15 issue. Before, if it was Mr. Comer it would be four
16 votes, and if it were somebody else it would be
17 three votes; but assuming we're at four votes,
18 whoever got the most votes but at least four votes
19 would then be mayor.

20 So I have no problem with this, and -- and I
21 think that would be an easy solution if the Attorney
22 General found fault in that process.

23 COUNCIL MEMBER BRAB: The weighted
24 voting is the problem. The way this is supposed to
25 be done is -- I'll take an example. I'm not in it,

1 but let's just say my name came up. The council
2 would say yes, yes, no, no, whatever. And if I
3 didn't get four votes, if that was what the AG said,
4 I'm out.

5 The next person would come up. Yes, yes, no,
6 no, whatever. You don't get four votes, you're out.

7 COUNCIL MEMBER LEONARD: Okay.

8 But now, what if nobody gets four votes?

9 COUNCIL MEMBER BRAB: Then you do
10 it all over again, as in the --

11 COUNCIL MEMBER LEONARD: The
12 same --

13 COUNCIL MEMBER BRAB: -- the 1928 --
14 and as in the 1928 Democratic National
15 Convention, it took 32 votes -- 32 votes. Do
16 you-guys want to stay around? 32 votes to
17 nominate the presi -- Democratic presidential
18 candidate. And that's the way --

19 COUNCIL MEMBER TUCCI: And he lost.

20 COUNCIL MEMBER BRAB: -- it had to be
21 done.

22 COUNCIL MEMBER TUCCI: And he lost
23 it.

24 COUNCIL MEMBER BRAB: Well, it
25 doesn't matter. But that was what I was advised

1 by people who have -- who have been in the
2 legislative process for 30, 35 years; and not only
3 on the local, but on the county, and also this
4 gentleman was a deputy commissioner for a local
5 government in Frankfort.

6 COUNCIL MEMBER BOWLING: Well, if --
7 if we're getting an opinion from -- from the
8 Attorney General, I think it makes sense to get an
9 opinion on all of it.

10 COUNCIL MEMBER BRAB: That's what
11 my point being is.

12 COUNCIL MEMBER BOWLING: Yeah, I --
13 and I agree.

14 COUNCIL MEMBER BRAB: If the council
15 accepts that -- and then -- I can just tell you folks:
16 I'm not sure we're going to get to a decision, and
17 then we're going to go to the governor. And if
18 that's what you want, that's what we're going to
19 get. And I see a lot of noes out here, but we're
20 having -- there's -- you know.

21 COUNCIL MEMBER TUCCI: Well, the
22 dif -- the difficulty is, Bill, that the way it is set
23 up, it isn't what do you want.

24 COUNCIL MEMBER BRAB: It's what we
25 have to do legally.

1 COUNCIL MEMBER TUCCI: It's what we
2 have to do legally, and it's what -- .

3 COUNCIL MEMBER LEONARD: Of
4 course.

5 COUNCIL MEMBER TUCCI: -- six people
6 want. And so the unfortunate thing is that there's
7 no provision for an interim election by the general
8 populous. And, you know, if -- if we were only two
9 months away from the next general election, it
10 would hardly matter.

11 COUNCIL MEMBER BRAB: Yeah,
12 that's -- that's --

13 COUNCIL MEMBER TUCCI: But -- but --
14 so whether everybody here and all the people who
15 haven't come, whether they're happy or not,
16 they're really out of the process.

17 COUNCIL MEMBER BRAB: Well, it's the
18 same thing, we had the insurance vote 18 months
19 ago. We had a lot of people stand up there, I was
20 one of them, that didn't like the insurance vote,
21 you know, but the council made some tough
22 decisions.

23 Well, we can decide tonight to make a tough
24 decision and say it's four or three and go on.

25 COUNCIL MEMBER TUCCI: And -- and --

1 COUNCIL MEMBER BRAB: And we can
2 make that decision, and we can be sued on any
3 part of the process. So the fear of a lawsuit, you
4 know, you're going to have that no matter what.

5 COUNCIL MEMBER MILES: Well, no. If
6 we do four, I don't know what we would be sued for
7 because --

8 COUNCIL MEMBER BRAB: The process.

9 COUNCIL MEMBER MILES: No, there's
10 noth -- I don't -- who would sue us if everybody
11 had to be four?

12 COUNCIL MEMBER BRAB: Because you
13 could be sued on the weighted voting, and you
14 could be sued on ranking.

15 COUNCIL MEMBER MILES: Well, I'm --
16 I'm not disagreeing with you. I'm saying let's get
17 an opinion on --

18 COUNCIL MEMBER BRAB: My point
19 being, Stuart, if you're going to review it, you
20 review the whole thing.

21 COUNCIL MEMBER MILES: And I agree
22 with you.

23 COUNCIL MEMBER BRAB: So the
24 decision is do we review it.

25 COUNCIL MEMBER MILES: I make a

1 motion we have our process, including the ranking
2 and the number of votes it takes to be mayor,
3 reviewed by the Attorney General's Office.

4 COUNCIL MEMBER TUCCI: I'll second it.

5 COUNCIL MEMBER BOWLING: Can I ask
6 a question real quick? How quick -- I -- I know
7 you said you thought they would -- they would do it
8 quickly because of the situation that --

9 CITY ATTORNEY POTTS: You know, I
10 mean, I can't --

11 COUNCIL MEMBER BOWLING: Right.

12 CITY ATTORNEY POTTS: -- tell you that
13 it'll be ten days or whatever it will be --

14 COUNCIL MEMBER BOWLING: Sure.

15 CITY ATTORNEY POTTS: -- but I -- I will
16 get the request to them --

17 COUNCIL MEMBER BOWLING: Okay.

18 CITY ATTORNEY POTTS: -- tomorrow --

19 COUNCIL MEMBER BOWLING: Gotcha;
20 okay.

21 CITY ATTORNEY POTTS: -- if you
22 approve it tonight. And I'll call them and tell them
23 that it's coming so that they -- you know, that they
24 understand -- and they understand already the
25 need to get it done.

1 COUNCIL MEMBER BOWLING: Okay.

2 COUNCIL MEMBER LEONARD: All right.

3 But what if it's not done? Then are we abdicating
4 our responsibility to do --.3

5 CITY ATTORNEY POTTS: Well, I mean, I
6 think you get a --

7 COUNCIL MEMBER LEONARD: -- our
8 duty?

9 CITY ATTORNEY POTTS: -- a drop-dead
10 date that you say that on the -- whatever the 9th of
11 April is, the day before we have to make a
12 decision, that you have a meeting. And you go
13 ahead and -- you know, and -- and if we get
14 something back sooner, then you schedule a --
15 another meeting, like a special -- another special
16 meeting.

17 COUNCIL MEMBER LEONARD: Okay.

18 But if the drop-dead is the 9th, and -- what process
19 would we follow on the 9th?

20 CITY ATTORNEY POTTS: Well, we're
21 going to have to -- you know, I -- I think if you -- if
22 you want it -- you can throw out the whole process
23 that you've already gone through, okay, of ranking
24 people.

25 COUNCIL MEMBER BRAB: And weighted

1 vote.

2 CITY ATTORNEY POTTS: And weighted
3 vote. You throw all of that out. You can do that
4 tonight.

5 You have four candidates. The only issue is
6 how you select the candidate who is voted on first.
7 Every one of them will be voted on by all of you in
8 term --

9 COUNCIL MEMBER LEONARD: But how
10 many votes will we get? I keep going back to that,
11 you know.

12 CITY ATTORNEY POTTS: You -- you
13 get --

14 COUNCIL MEMBER LEONARD: I was
15 never made -- okay.

16 CITY ATTORNEY POTTS: -- one vote for
17 each candidate.

18 COUNCIL MEMBER LEONARD: No. If
19 it's one vote for each candidate, we'll never come
20 to a resolution. There's too many votes out there.

21 COUNCIL MEMBER BRAB: No, you get --
22 you get one vote per -- you get one vote per
23 council member. You don't vote for all four.

24 CITY ATTORNEY POTTS: Right -- well,
25 no, you get --

1 COUNCIL MEMBER LEONARD: No.

2 COUNCIL MEMBER BRAB: That's the
3 weighted voting.

4 CITY ATTORNEY POTTS: No. No, it's
5 not weighted voting.

6 COUNCIL MEMBER BRAB: That's why
7 we're revisiting that.

8 CITY ATTORNEY POTTS: It's not
9 weighted voting, because each council member is
10 up for election -- or each -- each candidate is up
11 for election. And you get to vote for Stuart Miles,
12 yea, yea, yea, nay, nay or -- we're not going to do
13 "nays," but just "yeas." Kevin Comer, you know,
14 the same -- you go through that process.

15 So it's not a matter of only having one vote
16 to --

17 COUNCIL MEMBER LEONARD: But I --
18 I -- I don't think we ever get to a resolution in that
19 process. I just don't think it ever is going to end.

20 COUNCIL MEMBER MILES: Let's try.

21 THE AUDIENCE: Let's try it.

22 COUNCIL MEMBER MILES: You know,
23 instead of just saying we don't -- let's try. And if
24 it doesn't work, then we'll try something else.

25 COUNCIL MEMBER LEONARD: You

1 know, there's another thing going on here, and
2 that is that we've gone through this. We did the
3 ranking. We signed our names to it so it would be
4 open, and there are a number of people sitting
5 there who know how it came out and there are the
6 rest of us who don't.

7 And that, by itself, creates a taint. It makes
8 us wonder if we're having this discussion based on
9 how that sheet came out. Now, it may not, but I
10 think that we all have a right to know what's gone
11 on at this point in time.

12 COUNCIL MEMBER MILES: Yeah, and
13 I -- I -- I would be happy to share who I ranked and
14 why I ranked and --

15 COUNCIL MEMBER BRAB: No, you just
16 get a --

17 COUNCIL MEMBER LEONARD: No,
18 just --

19 COUNCIL MEMBER BRAB: -- you get the
20 total.

21 COUNCIL MEMBER LEONARD: Right.
22 Yeah, just the totals, because it does create an
23 impression.

24 CITY ATTORNEY POTTS: Well, I mean,
25 I -- there's certainly no problem with -- with that.

1 I mean, that information is -- is available. I'm --
2 I'm just suggesting that if you decide you don't
3 want to use that, if you want to eliminate one of
4 the issues before you -- if you decide to seek an
5 opinion, you can throw out everything that you've
6 done, because, again, it's all up to you. That's
7 the point.

8 COUNCIL MEMBER MILES: Is that --

9 CITY ATTORNEY POTTS: I mean --

10 COUNCIL MEMBER MILES: I'm sorry,
11 Grover. Go ahead.

12 CITY ATTORNEY POTTS: And if you
13 want -- I mean, we have tabulated the rankings,
14 and -- and I'm not going to -- to announce the
15 votes and -- or the numbers for the rankings, but I
16 would, you know, tell you the order in which the
17 voting would occur based upon those rankings,
18 if -- if you-all want to -- to know that, with the
19 person who was the first to be voted, the person
20 who would be -- who would have received those
21 numbers that would indicate that that person would
22 least likely to be elected up to the person that
23 would be most likely to be elected.

24 COUNCIL MEMBER TUCCI: Or since
25 we're going to be voting for -- you know, some of

1 this process was begun with the possibility that
2 you would have, you know, an unwielding [sic]
3 number of people. You know, every other person
4 in Prospect would decide to give up his or her
5 career and instead become mayor, and so we would
6 have so many people that you would have to find
7 some mechanism to narrow it down.

8 Well, it turns out there are only four. This is
9 not hard. I mean, I'm not real good at math, but I
10 can handle four.

11 So it -- we could do it alphabetically. It
12 doesn't really matter. You know, first you vote for
13 Comer -- no -- no --

14 CITY ATTORNEY POTTS: Comer would
15 be first.

16 COUNCIL MEMBER TUCCI: Yeah, Comer
17 would be -- I'm bad at alphabets. I can do four.

18 You just do it that way, and it doesn't really
19 matter. However it was ranked, it doesn't make
20 any difference. It will all become clear when
21 somebody says how -- you know, Mrs. Leonard, in
22 the matter of Evan Comer, and you can either say
23 "yea" or "pass." You know, Mr. Scott, in the
24 matter of Evan Comer, "yea" or "pass." That's it.
25 You're done. And then just go through the

1 alphabet. How hard is that?

2 COUNCIL MEMBER MILES: So --

3 COUNCIL MEMBER TUCCI: Am I making
4 it too simple? Do --

5 THE AUDIENCE: It works for me.
6 There's already a motion on the floor to send this
7 to the -- the AG, and someone has seconded that.

8 COUNCIL MEMBER TUCCI: I seconded
9 that.

10 THE AUDIENCE: So before we even start
11 announcing rankings --

12 COUNCIL MEMBER TUCCI: Yeah.

13 THE AUDIENCE: -- how about you vote
14 or not vote on that?

15 COUNCIL MEMBER TUCCI: Well, we
16 have a motion and a second.

17 COUNCIL MEMBER BRAB: Could you
18 repeat the motion? It's been awhile.

19 COUNCIL MEMBER MILES: Yeah, I'll try
20 and do it to for a second time. My motion is that
21 we get an opinion from the Attorney General on
22 both the ranking aspect of how we have decided to
23 do the vote for mayor -- or the process for mayor;
24 and also the number of votes required to be mayor,
25 and whether or not the current process we have

1 requiring three votes for a council member and
2 four votes for a noncouncil member is legal.

3 Did I get that right, Sandy? Can you second
4 that?

5 COUNCIL MEMBER TUCCI: I'll second
6 that.

7 COUNCIL MEMBER MILES: Okay.

8 COUNCIL MEMBER TUCCI: I guess it's
9 time to vote.

10 COUNCIL MEMBER MILES: Well --

11 COUNCIL MEMBER LEONARD: I --
12 well --

13 COUNCIL MEMBER TUCCI: No? Okay.
14 More discuss -- more discussion?

15 COUNCIL MEMBER BOWLING: Can we
16 have discussion first?

17 COUNCIL MEMBER TUCCI: More
18 discussion? Yeah, I thought we had already had
19 the discussion --

20 COUNCIL MEMBER BOWLING: Right.
21 Well --

22 COUNCIL MEMBER TUCCI: I guess we
23 veered off from it.

24 COUNCIL MEMBER BOWLING: -- the --
25 the way Stuart just put it, it -- it's only going to

1 the AG on the -- on the three or four vote.

2 CITY ATTORNEY POTTS: No, no.

3 COUNCIL MEMBER BOWLING: No?

4 Okay. All right. I just wanted to be --

5 COUNCIL MEMBER LEONARD: Well, no,

6 the weighted voting didn't get in there.

7 COUNCIL MEMBER TUCCI: No, it was in

8 there.

9 COUNCIL MEMBER BOWLING: Okay.

10 COUNCIL MEMBER TUCCI: At least I

11 thought I heard it.

12 COUNCIL MEMBER MILES: Well, I mean,

13 that's the part of the process that we -- we've laid

14 out.

15 COUNCIL MEMBER BOWLING: Right.

16 Okay. I just -- I wanted to be clear on that.

17 COUNCIL MEMBER LEONARD: No, it's --

18 it's the ranking I heard clearly.

19 COUNCIL MEMBER BOWLING: Yeah, I

20 didn't -- I didn't hear the --

21 COUNCIL MEMBER LEONARD: The

22 weighted voting I didn't hear.

23 COUNCIL MEMBER MILES: Okay.

24 CITY ATTORNEY POTTS: But the

25 ranking and the weighting voting -- weighted

1 voting are the same thing. You're trying --

2 COUNCIL MEMBER LEONARD: No.

3 CITY ATTORNEY POTTS: Yeah.

4 COUNCIL MEMBER LEONARD: No.

5 CITY ATTORNEY POTTS: Yeah.

6 COUNCIL MEMBER LEONARD: No, not

7 at all.

8 CITY ATTORNEY POTTS: No, they --

9 they are.

10 COUNCIL MEMBER LEONARD: No,

11 they're not.

12 CITY ATTORNEY POTTS: They -- they

13 are, because all you're doing is you're trying to

14 get to a point where you determine the order in

15 which you will vote on the persons who are running

16 for mayor.

17 COUNCIL MEMBER BRAB: Well, let

18 me -- let me clarify. The weighted voting, as you

19 put it for us, and I call it the weighted voting,

20 which is really Phase 2.

21 THE REPORTER: Mr. Brab, could --

22 COUNCIL MEMBER BRAB: Sorry. I'm

23 sorry. The -- the weight -- the weighted voting,

24 it's a little different than what you're saying,

25 Grover, because the weighted voting, as you put it

1 forth in your -- in your outline, was that there
2 would be eliminations.

3 CITY ATTORNEY POTTS: Right, but
4 there -- there won't be now.

5 COUNCIL MEMBER BRAB: So there is
6 no weighted voting.

7 CITY ATTORNEY POTTS: There is no
8 weighting [sic] voting.

9 COUNCIL MEMBER BRAB: That's what --
10 that's what Sandra is saying, so that that is part of
11 going -- what we're saying is going to the AG.

12 So the second phase of your whole proposal --
13 not only first phase but second phase goes away.
14 You go right to the final voting until you get a
15 final -- until you get four vote -- whatever the
16 number is.

17 CITY ATTORNEY POTTS: Whatever the
18 number is.

19 COUNCIL MEMBER BRAB: Right.

20 COUNCIL MEMBER MILES: So -- so,
21 again, to make sure we're clear, because I thought
22 I was clear and -- and now I'm questioning that, is
23 that we're going to have Candidates A, B, C, and
24 D. And Candidate A just happens to be first in our
25 -- our process.

1 And so we each go through, and we cast -- we
2 have the opportunity to cast a "yes" vote for
3 Candidate A. And we go through with Candidate A,
4 and Candidate A gets two votes.

5 And we go to Candidate B, and Candidate B --
6 and this is assuming you need four votes to be
7 mayor no matter who you are. We get to Candidate
8 B, and Candidate B gets three votes. We get to
9 Candidate C, and Candidate C gets three votes,
10 and we get to Candidate D, and Candidate D gets
11 three votes.

12 In the system described by Grover, Candidate
13 A, who only got two votes, would be out of the
14 process because they were the lowest vote; and
15 then we would do it again. And we would go to
16 Candidate B, and Candidate B got two votes, and
17 Candidate C got three votes, and Candidate D got
18 three votes. Now B is out.

19 And then now we're left with C and D. And at
20 that point, whoever gets four votes or greater --
21 whoever has the largest amount of votes, as long
22 as it's four or greater will be the mayor. Did I get
23 that right?

24 CITY ATTORNEY POTTS: [nods head]

25 COUNCIL MEMBER MILES: Okay. Is

1 anybody questioning that?

2 COUNCIL MEMBER LEONARD: I -- what
3 I've got problems with is we should have had this
4 discussion a long time ago.

5 COUNCIL MEMBER MILES: I thought we
6 did.

7 COUNCIL MEMBER LEONARD: I am very
8 concerned that we are going to end up abdicating
9 our decision making by waiting for somebody on
10 the outside to give us a piece of paper that we're
11 hoping will tell us what we can do and what we
12 can't do, but I've read AG opinions. They're all
13 over the place in terms of how they're going to
14 respond to an issue that's never been before them
15 before.

16 And I really don't want to see us sitting here
17 on April 9th saying, "Oh, my goodness, what are we
18 going to do? I guess we're going to have to let the
19 governor make the decision for the City of
20 Prospect."

21 COUNCIL MEMBER MILES: No, we can
22 pick a drop-dead date; and if we haven't gotten a
23 decision, then we can meet again and. . .

24 COUNCIL MEMBER LEONARD: And we
25 don't have a process --

1 COUNCIL MEMBER MILES: Well --

2 COUNCIL MEMBER LEONARD: --

3 because we've just thrown it out.

4 COUNCIL MEMBER MILES: -- at that
5 point if, if -- if -- if the four who voted for the
6 current process feel strongly about that, and they
7 haven't changed their mind to make it four votes
8 for anybody, then I guess that's the path we'll go
9 down.

10 It would be the same path we're taking now if
11 we did it today, but if we wait and get an opinion, I
12 believe it -- it would make me a whole lot more
13 comfortable in what we're doing, and I think it
14 would give us comfort. And it would, I think, make
15 the citizens of Prospect feel a whole lot more
16 comfortable with the process that we're doing.

17 COUNCIL MEMBER BOWLING: Are we
18 more protected, Grover, being that it's just -- I
19 mean, at the end of the day, it's a -- it's another
20 attorney's opinion; correct?

21 CITY ATTORNEY POTTS: Yeah.

22 COUNCIL MEMBER BOWLING: Does it
23 carry any more weight than any other attorney in
24 the state's opinion?

25 CITY ATTORNEY POTTS: It -- it doesn't

1 carry any more weight in the sense that it's not
2 law. It does carry weight in the sense that if we
3 get sued, we could say, "Well, we sought the
4 Attorney General's opinion, and here's what it
5 was." And it -- so it -- it -- it's -- it's another
6 level of opinion.

7 COUNCIL MEMBER BOWLING: Okay.

8 COUNCIL MEMBER MILES: And I think,
9 given the fact that -- that the council's gone
10 against the advice of our counsel, which I think
11 puts us in a very perilous place, I think we need as
12 much cover as possible if we were to go on with
13 that process and someone were to take legal
14 action against us.

15 COUNCIL MEMBER TUCCI: Does he have
16 a hand up back here? Yes.

17 MR. GORMAN: My name is Chris
18 Gorman, 6702 John Hancock Place, and I was the
19 Attorney General of Kentucky from 1992 to 1996.

20 Just to not be redundant, but to add to what's
21 already been said, the -- the reason I think that
22 you should go with Grover's advice is -- and -- and
23 Council Bowling, you indicated, well, it's just
24 another opinion. It -- it's really not.

25 COUNCIL MEMBER BOWLING: Well, I

1 was asking. I was --

2 MR. GORMAN: Yeah, I understand.

3 COUNCIL MEMBER BOWLING: Yeah.

4 Right.

5 MR. GORMAN: It's really not, because if
6 the election proceeds and it's illegal, any citizen
7 can file a complaint under -- it's KRS
8 400-something, Grover, and I'll --

9 CITY ATTORNEY POTTS: Right.

10 MR. GORMAN: -- I'll get it for you, for
11 somebody usurping the office. And it's the
12 Attorney General --

13 CITY ATTORNEY POTTS: Right, who
14 prosecutes that.

15 MR. GORMAN: -- who prosecutes that.
16 So it's not just any lawyer. It's the Attorney
17 General who would be -- who would have the
18 discretion as to whether or not he or she, in this
19 case it's a he, would go ahead and file the action
20 to void the election. Thank you. Thank you.

21 COUNCIL MEMBER MILES: That's what I
22 love living about this city. How often do you have
23 an Attorney General handy when you need one?

24 COUNCIL MEMBER TUCCI: I think if we
25 could also have a couple of doctors in the

1 audience --

2 COUNCIL MEMBER MILES: Yeah.

3 COUNCIL MEMBER TUCCI: -- that would
4 be helpful, too.

5 COUNCIL MEMBER MILES: I -- I feel
6 that --

7 CITY ATTORNEY POTTS: We might need
8 one.

9 COUNCIL MEMBER MILES: -- all of my
10 legal and medical needs are covered right now if
11 something were to happen to me.

12 COUNCIL MEMBER TUCCI: I'd -- I'd --
13 I'd like to sort of --

14 CITY ATTORNEY POTTS: There's
15 some -- somebody else with a hand up.

16 COUNCIL MEMBER TUCCI: -- somebody
17 else has a hand up? Yes, Mr. Williams.

18 MR. WILLIAMS: It seems there are two
19 other alternatives --

20 CITY ATTORNEY POTTS: You -- you
21 need to come to the podium, and state your name
22 and address, please.

23 MR. WILLIAMS: I'm Martin Williams. I
24 live at 7303 Fox Bluff.

25 And I think there are two alternatives that we

1 haven't explored. One is to put Mr. Comer on the
2 panel and say he can't vote for himself, so
3 everybody gets the same number of votes.

4 The other one is to not do a sequential vote.
5 Make it a secret ballot, and sequential in the
6 sense -- everybody votes at once in a -- in a bag
7 or something. The votes are tallied. The last
8 person is out. Vote again. You've only got four
9 candidates, so. . .

10 COUNCIL MEMBER TUCCI: Except that
11 we have an Open Meeting law, so we can't have
12 secret --

13 COUNCIL MEMBER BRAB: Secret
14 ballots; no.

15 COUNCIL MEMBER TUCCI: -- votes.
16 Other than that, it would be nice.

17 COUNCIL MEMBER BRAB: And we can't
18 ab -- we can't abrogate our responsibility as a
19 council and put somebody else on arbitrarily,
20 regardless of what --

21 MR. WILLIAMS: Oh.

22 COUNCIL MEMBER BRAB: -- their
23 position is.

24 MR. WILLIAMS: Well, he doesn't have to
25 be -- he can be a pro temp.

1 COUNCIL MEMBER MILES: Thank you
2 for your suggestion.

3 COUNCIL MEMBER TUCCI: I'm not sure
4 how this is going to -- is going to all come out, but
5 I want to reiterate what I emphasized last Monday,
6 which is that I think it's important that what we do
7 be legal. I also think it's important that it look
8 cleanly legal to everybody, that it does not look
9 like there has been a stacked deck.

10 And I do that partly for Prospect's reputation,
11 which matters to me and I think matters to all of
12 us. I also feel way for whoever becomes mayor.
13 It's a hard job being mayor. To be mayor with a
14 cloud over your election, with people saying, well,
15 he's not really -- this is -- this is a disservice to
16 somebody, whoever becomes mayor, who will be
17 doing something very difficult and not making
18 enough money added to be worth the effort that
19 has to go into it.

20 COUNCIL MEMBER MILES: So I think we
21 have a motion.

22 CITY ATTORNEY POTTS: And a second.

23 COUNCIL MEMBER TUCCI: And a
24 second.

25 COUNCIL MEMBER MILES: And a

1 second.

2 COUNCIL MEMBER TUCCI: Anymore

3 discussion?

4 COUNCIL MEMBER MILES: Yes.

5 COUNCIL MEMBER BRAB: No.

6 COUNCIL MEMBER TUCCI: Yes.

7 COUNCIL MEMBER BOWLING: Yes.

8 COUNCIL MEMBER SCOTT: No.

9 COUNCIL MEMBER LEONARD: Yes.

10 CITY ATTORNEY POTTS: Four to two.

11 COUNCIL MEMBER TUCCI: Four to two.

12 COUNCIL MEMBER BRAB: So are we

13 going to -- we're going to the AG.

14 CITY ATTORNEY POTTS: Correct.

15 COUNCIL MEMBER MILES: So the

16 motion carried --

17 COUNCIL MEMBER TUCCI: The motion

18 carried.

19 COUNCIL MEMBER MILES: -- and we

20 will go to the Attorney General for an opinion.

21 COUNCIL MEMBER BRAB: One other

22 thing.

23 COUNCIL MEMBER MILES: And before

24 anybody runs out, I want to thank everybody for

25 coming tonight. I think you are what makes this --

1 you are what are makes this city fantastic. Thank
2 you.

3 COUNCIL MEMBER TUCCI: Motion for
4 adjournment?

5 COUNCIL MEMBER BRAB: Whoa, whoa,
6 whoa. Whoa, whoa, whoa.

7 COUNCIL MEMBER TUCCI: Wait.

8 COUNCIL MEMBER MILES: Time out.

9 COUNCIL MEMBER BRAB: Somebody
10 brought up that they wanted to -- didn't Stuart
11 bring up that he wanted to have this -- know what
12 the order -- or Sandra brought it up, that she
13 wanted to know what the order of --

14 THE REPORTER: Mr. Brab, will you
15 speak --

16 COUNCIL MEMBER BRAB: -- this
17 ranking --

18 CITY ATTORNEY POTTS: You need to
19 speak --

20 COUNCIL MEMBER BRAB: Sandra --
21 before we adjourned, didn't Ms. Leonard bring up
22 the question of she wanted to know what the
23 ranking was, because we filled out all these
24 papers and put our names on them?

25 COUNCIL MEMBER LEONARD: Well, and

1 I had a --

2 COUNCIL MEMBER BRAB: And we don't
3 need to know the numerical numbers, but we --
4 we -- I think what you said, Grover, is at least the
5 order that these rankings would have voted. Is
6 that something we have to do?

7 CITY ATTORNEY POTTS: It is not
8 something you have to do. It's something you
9 certainly can do. That is an issue that we're going
10 to ask the Attorney General about, about the order
11 in which the voting would occur. So it doesn't --
12 you know, whatever your pleasure is on that.

13 COUNCIL MEMBER LEONARD: Even if I
14 turn out at five [phonetic], I have a feeling the
15 citizens have a right to know.

16 THE AUDIENCE: We do.

17 COUNCIL MEMBER BRAB: I agree.

18 COUNCIL MEMBER SCOTT: I agree.

19 COUNCIL MEMBER BOWLING: I agree.

20 CITY ATTORNEY POTTS: The -- the way
21 that --

22 COUNCIL MEMBER BOWLING: Do you
23 agree?

24 COUNCIL MEMBER MILES: Oh, I don't
25 care.

1 CITY ATTORNEY POTTS: There was that
2 the order of voting would occur based upon the
3 evaluation forms, the first person voted on would
4 have been Evan Comer; the second person would
5 have been Stuart Miles; the third person would
6 have been Sandra Leonard; and the fourth person
7 would have been Michael Scott.

8 COUNCIL MEMBER TUCCI: Okay. Now,
9 a motion for adjournment anyone?

10 COUNCIL MEMBER LEONARD: I move.

11 COUNCIL MEMBER BRAB: So moved.

12 COUNCIL MEMBER TUCCI: Second?

13 COUNCIL MEMBER SCOTT: Second.

14 COUNCIL MEMBER TUCCI: All in favor?

15 COUNCIL MEMBERS: Aye.

16 COUNCIL MEMBER TUCCI: All right.

17 [WHEREUPON, the City Council Meeting,
18 Session 2 concludes at 8:49 p.m.]

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CERTIFICATE OF REPORTER

STATE OF KENTUCKY AT LARGE:

I, ROSE MARY KITHCART, RPR, Notary
Public for the State of Kentucky at Large, do
hereby certify that the foregoing was reported by
stenographic and mechanical means, which matter
was held on the date, and at the time and place
set out in the caption hereof and that the
foregoing constitutes a true and accurate
transcript of same.

I further certify that I am not related to any of
the parties, nor am I an employee of or related to
any of the attorneys representing the parties, and
I have no financial interest in the outcome of this
matter.

GIVEN under my hand and Notarial seal this
_____ day of _____, 2013.

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My Commission Expires: Notary Public

.

AUGUST 27, 2013

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Notary ID: 402347

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