

**KAY CO. GRAND JURY  
SUBMISSION OF QUESTION**

I, Jessica Pepper, formally request the Kay Co. Grand Jury to consider the following question for review.

**Did the City of Blackwell violate State Law by using the Executive Session clause of the Oklahoma Open Meeting Act in connection with the engagement of legal counsel for the City of Blackwell, and/or the termination of a contract for an engineer?**

Oklahoma statute Title 25 Chapter 8 Section 307 states, "...No body shall hold executive sessions unless otherwise specifically provided in this section... Executive session of a public body will be permitted only for the purpose of: 1. Discussing the *employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee.*" (Emphasis Added)

The Attorney General's Opinion 2005 OK AG 29, in paragraph 13 states "... 1. A public body may hold an executive session under the Open Meeting Act only to discuss the 'employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee[.]' 25 O.S. Supp. 2004, § 307 (B)(1). Discussing awarding a contract for professional services when the recipient will be an independent contractor, rather than a public officer of the public body, is not a proper subject for an executive session. Whether a particular position qualifies as an employee or an independent contractor is a question of fact outside the scope of an Attorney General Opinion 74 O.S. 2001, § 18b (A)(5).

The minutes from the City's meeting of February 28, 2007, cite "... 2. Discussion and Possible Action regarding the Legal Avenues and Strategies of Finalize Settlement Agreement with Phelps Dodge, *Including the Possible Hiring of Additional Counsel and/or Experts and Possible Authorization for Litigation.*" (Emphasis Added).

At the beginning of another special joint meeting of the Board of Commissioners/BMA, and the BIA on March 27, 2007 Brad Bechtel (City Commissioner Ward 4/Trustee) motion to hire Don Shandy as special counsel to represent Blackwell in negotiations and settlement with Phelps-Dodge and ODEQ. The motion carried.

In the time frame between the two meetings, there were no other discussions about contracting with Don Shandy for his legal counsel. It is evident that the decision to hire Don Shandy occurred during the meeting of February 28, 2007 with no public discussion.

September 18, 2006 during a City Commissioner Meeting, the commissioners went into executive session to discuss Jim Willis' request for his engineering contract to be terminated. Jim Willis was a contracted engineer for the City of Blackwell since the year 2000. From 8:30pm to 9:15pm the Commissioner discussed the termination of his contract and then approved the termination before the public. No discussion about his engineering contract was discussed during open session.

Submitted this day November 28, 2008.

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Requesting Party

*J. Leppa*

MINUTES OF SPECIAL JOINT MEETING OF THE  
BOARD OF COMMISSIONERS/BLACKWELL MUNICIPAL AUTHORITY  
WITH THE BLACKWELL INDUSTRIAL AUTHORITY  
BLACKWELL, OKLAHOMA  
WEDNESDAY, FEBRUARY 28, 2007

Pursuant to the legal notice as is required by the Oklahoma Open Meeting Act, including the posting of notice and agenda on February 26, 2007, as is required by the terms thereof, the Blackwell Board of Commissioners/Trustees of the Blackwell Municipal Authority of the City of Blackwell met in a special meeting at 2:00 p.m. in the upstairs conference room of City Hall located at 221 West Blackwell, Blackwell, Oklahoma with Mayor/Chairman Cordell presiding:

Present: Mark Cordell, Mayor/Chairman  
Ruth Buesing, Commissioner Ward 1/Trustee  
Max Wirtz, Commissioner Ward 2/Trustee  
Brad Bechtel, Commissioner, Ward 4/Trustee  
Sara Norris, City/Authority Manager  
Debra Paige, City Clerk/Secretary  
Mary Ann Karns, City/Authority Attorney

Absent: Steve LeValley, Commissioner Ward 3/Trustee

Others present: Attorney Jon Ihrig; Nita Carroll, Paula Wolf, Commission Candidates; and 2 citizens in the audience.

Attending from Blackwell Industrial Authority Board: Chairman Darrell Grossardt, Mike Loftis, Greg Sandy, Attorney Jim Menzer, BIA Executive Director Shane Frye and Nancy Thompson.

**1. MEETING CALLED TO ORDER:**

Mayor/Chairman Cordell called the special meeting to order at 2:00 p.m.

Blackwell Industrial Authority Chairman Darrell Grossardt called BIA special meeting to order.

Mayor Cordell read a statement regarding the settlement agreement with Phelps Dodge.

**2. Discussion and Possible Action Regarding Legal Avenues and Strategies to Finalize Settlement Agreement with Phelps Dodge, Including Possible Hiring of Additional Counsel and/or Experts and Possible Authorization for Litigation.**

**Note: Attorneys for the City, BMA and BIA Will Recommend an Executive Session in Accordance with 25 O.S. 307 (B)(4) for Confidential Discussion. The Attorneys Have Determined that Public Disclosure Will Seriously Impair the Ability of the Public Body to Make a Decision in the Public Interest.**

**Vote to go into Executive Session.**

Motion made by Bechtel, seconded by Buesing to enter into executive session at 2:05 p.m. Roll, yeas: Cordell, Buesing, Wirtz and Bechtel. Nays: none. Motion carried.

City Attorney Karns, BIA Attorney Menzer and Attorney Ihrig will also be in executive session.

**Return from Executive Session.**

Motion made by Wirtz, seconded by Buesing to reconvene open session at 3:45 p.m. Roll, yeas: Cordell, Buesing, Wirtz and Bechtel. Nays: none. Motion carried.

Motion and approval by BIA to reconvene open session.

Motion made by Bechtel, seconded by Buesing authorizing Attorney Jon Ihrig and Attorney Mary Ann Karns to meet with DEQ to carry out other recommendations that Attorneys made in executive session. Roll, yeas: Cordell, Buesing, Wirtz and Bechtel. Nays: none. Motion carried.

**3. Adjournment.**

Motion and approval by BIA to adjourn meeting.

There being no further business Mayor/Chairman Cordell adjourned the meeting at 3:47 p.m.

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Debra Paige, City Clerk

**MINUTES OF SPECIAL JOINT MEETING OF THE  
BOARD OF COMMISSIONERS/BLACKWELL MUNICIPAL AUTHORITY  
WITH THE BLACKWELL INDUSTRIAL AUTHORITY  
BLACKWELL, OKLAHOMA  
TUESDAY, MARCH 27, 2007**

Pursuant to the legal notice as is required by the Oklahoma Open Meeting Act, including the posting of notice and agenda on March 23, 2007, as is required by the terms thereof, the Blackwell Board of Commissioners/Trustees of the Blackwell Municipal Authority of the City of Blackwell met in a special joint meeting at 2:00 p.m. in the upstairs conference room of City Hall located at 221 West Blackwell, Blackwell, Oklahoma with Mayor Cordell presiding:

Present: Mark Cordell, Mayor/Chairman  
Max Wirtz, Commissioner Ward 2/Trustee  
Steve LeValley, Commissioner Ward 3/Trustee  
Brad Bechtel, Commissioner, Ward 4/Trustee  
Sara Norris, City/Authority Manager  
Debra Paige, City Clerk/Secretary

Absent: Ruth Buesing, Commissioner Ward 1/Trustee  
Mary Ann Karns, City/Authority Attorney

Others present: Attorney Jon Ihrig; Attorney Don Shandy; Commission Candidate Nita Carroll and 2 citizens in the audience.

Attending from Blackwell Industrial Authority Board: Chairman Darrell Grossardt, and Attorney Jim Menzer.

**1. MEETING CALLED TO ORDER:**

Mayor/Chairman Cordell called the special meeting to order at 2:00 p.m.

Blackwell Industrial Authority did not have a quorum.

Mayor/Chairman Cordell said Attorney David Page, our former Environmental Counsel has gone on to a new law firm and we have enjoyed all the work he has done for the City.

**2. BUSINESS:**

**A. Consider hiring of special counsel to represent Blackwell in negotiation and settlement with Phelps-Dodge and ODEQ and related matters.**

Motion made by Bechtel, seconded by LeValley to hire Don Shandy as special counsel to represent Blackwell in negotiation and settlement with Phelps-Dodge and ODEQ and related matters. Roll, yeas: Cordell, Bechtel, LeValley and Wirtz. Nays: none. Motion carried.

**B. Discussion with attorneys regarding Phelps-Dodge and ODEQ negotiation and settlement. Attorneys for the City, BMA and BIA have determined that this discussion should take place in executive session because disclosure would seriously impair the ability to proceed in the public interest as authorized in 25 O.S. 307 (B)(4).**

**C. Vote to go into Executive Session.**

Motion made by Bechtel, seconded by LeValley to enter into executive session at 2:03 p.m. and invite BIA Chairman Grossardt and Attorney Menzer. Roll, yeas: Cordell, Bechtel, LeValley and Wirtz. Nays: none. Motion carried.

Attorney Ihrig and Attorney Shandy will also be in executive session.

**D. Return from Executive Session.**

Motion made by Bechtel, seconded by LeValley to reconvene open session at 3:55 p.m. Roll, yeas: Cordell, Bechtel, LeValley and Wirtz. Nays: none. Motion carried.

**E. Action, If Any, on Posted Item.**

Mayor/Chairman Cordell made the following statement:  
Don Shandy has been hired by the City of Blackwell to represent it in environmental matters. Shandy has practiced law for 22 years and is a director with the Oklahoma City firm of Ryan Whaley & Coldiron, P.C. The City, in conjunction with Shandy will begin a process to re-evaluate a proposed settlement agreement with Phelps Dodge. In addition the City will continue evaluation of institutional controls and negotiation of a potential administrative order with the Oklahoma Department of Environmental Quality. The City is committed to protecting public health and the environment and is continuing negotiations with Phelps Dodge in a manner which will not impact individual personal or property rights.

**3. Adjournment.**

There being no further business Mayor Cordell adjourned the meeting at 3:57 p.m.

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Debra Paige, City Clerk

*GLM*  
*Need Electric*

**Blackwell City Commission Agenda  
Monday, September 18, 2006  
City Administration Building  
221 West Blackwell  
Blackwell, OK 74631**

*More than Sidewalk*

- 1. Meeting Called to Order ..... 7:00 p.m.
- 2. Opening Ceremonies.
- 3. Special Presentations and/or Recognitions:

- 4. Consent Agenda:
  - (A) Minutes of 09/05/06 Special Meeting.
  - (B) Minutes of 09/12/06 Special Meeting.
  - (C) Minutes of 09/12/06 Special Joint Work Session.
  - (D) Retirement of Terry K. Bonewell to Receive Retirement Benefits from Oklahoma Municipal Retirement Fund.
  - (E) Appointment of Fire Chief Tom Beliel as Acting Emergency Preparedness Director.

5. **Public Comments.** (Open for Blackwell Citizens to be heard on items not included on this agenda. As provided by law, the City Commission shall make no decisions or consideration of action of citizen's comments, except to refer the matter to the City Manager for administrative consideration, or to schedule the matter for Commission consideration at a later date. Those citizens addressing the City Commission are requested to come to the microphone and identify themselves by name and address for the official record).

6. Board Comments.

7. Management Comments.

8. Business:

*No Statutes*

- (A) Report on Codification of City of Blackwell Ordinances.
- (B) Discussion and Action on Settlement Agreement with Phelps Dodge Corporation Concerning Blackwell Zinc Site.

(C) Discussion and Action on Consent Decree with the State of Oklahoma Concerning Consent Decree.

(D) Consideration and Possible Action on Award of Bids for 100% Exhaust Removal System for the Blackwell Fire Department.

(E) Change Order Number One for the City of Blackwell Downtown Sidewalk Project. *34500*

(F) Discussion and Action on Request to Oklahoma Department of Commerce for Contract Extension for CDBG Sidewalk Grant.

(G) Appointment of Mike Riggs as Member of Lake Blackwell Trust Authority Board to Fill the Position Previously Held by Don Heimerman to Expire June 2007.

- (H) Discussion and Possible Action Relating to the Employment, Hiring, Appoint, Promotion, Demotion, Disciplining or Resignation of Following Individuals: Jim Willis, Including Executive Session Pursuant to Oklahoma Statutes Title 25, Section 307(B)(3).
  - A. Motion to Enter into Executive Session.
  - B. Motion to Reconvene Open Meeting.
  - C. Action, If Any, from Executive Session.

*What are they doing with the old ordinances*

9. Adjournment.