

Loehr, Rosemary Ann

From: Eric Sutherland <sutherix@yahoo.com>
Sent: Tuesday, March 19, 2019 11:16 AM
To: City Leaders
Cc: Mill, John W.; Loehr, Rosemary Ann; John Duval; Carrie Daggett; Joe Wilson; Jason Frisbie; Mike Beckstead; Delynn Coldiron
Subject: How did we end up with a bunch of people who can't read in city government?

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From the Fort Collins City Charter:

Article II Section 5. - Powers. All

powers of the city and the determination of all matters of policy shall be vested in the Council except as otherwise provided by this Charter.

Article II Section 16. - Contracts with other governmental bodies.

The Council may, by ordinance or resolution, enter into contracts with other governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies.

Article V Section 19.3(b). - Revenue securities..

Neither shall the Council authorize the board of the enterprise to acquire, construct or install or hold title to or dispose of any city-owned property used in the operation of the enterprise, to impose or adjust rates, fees, tolls or charges for the use of any such property or for any service or commodity furnished by the enterprise, to levy special assessments or **to exercise any power reserved to the Council or other city officials by this Charter or otherwise (other than the power to issue revenue bonds and other obligations).**

SPECIAL HELP FOR MAYOR WADE TROXELL

Try reading just the emphasized text of 19.3(b) in isolation if reading the entire sentence is to complicated for you. If this is still to complicated for you then please consider that the title of Article V of the City Charter is Finance.

In other words, the EUEB can't enter into contracts or take any other legislative or administrative action except for ***issuance*** of revenue bonds and other obligations. To the extent that the supply agreement with PRPA is an 'obligation' it is clearly not the sort of obligation that the voters authorized an enterprise board to issue. Contracts are not 'issued'. Rather, contracts are executed or, in this case, extended. See p. 3 of the Power Supply Agreement.

...notwithstanding any other provision of this Agreement, the obligation of Fort Collins to pay Platte River for all electric power and energy furnished hereunder shall be, and is, a special obligation of Fort Collins payable solely from revenues to be received by Fort Collins from the sale of electric power and energy to its electric utility customers during the term hereof and is not a lien, charge, or liability against Fort Collins or against any property or funds of Fort Collins other than revenues to be received by Fort Collins from the sale of electric power and energy to its electric utility customers during the term hereof, and the obligation to pay Platte River for all electric power and energy furnished hereunder does not constitute a debt, liability, or obligation of Fort Collins other than from its revenues to be received from the sale of electric power and energy to its electric utility customers during the term hereof, and Fort Collins is not otherwise obligated to pay such obligation.

Consequently, [the action contemplated for the next EUEB meeting](#) is inconsistent with the authorization made by the voters in adopting Art. V section 19.3(b).

EXHIBIT
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Besides all of the above ... how much sense does it make to have two separate entities acting at two separate public meetings doing exactly the same thing while purporting to act for a single municipal corporation?

What a bunch of dopes!!!!

Nobody elected or appointed anyone to the EUEB. Actions taken outside of a city council meeting are not actions of council and may not be deemed to have any effect under any circumstances. ***Final passage of all ordinances except emergency ordinances shall be at a regular Council meeting.*** (Article II section 6 of City Charter and there is no substantial compliance wiggle room for Charter provisions.)

The entire legislative scheme of enterprise boards was intended to create the equivalent of Council putting on funny hats during a regular meeting to conduct the business of a quasi-artificial entity exclusively for the purposes of distinguishing the creation of debt repayable by utility revenues from debt repayable with tax revenues. The 'enterprise board' board scheme was a paranoid, knee-jerk reaction to the passage of TABOR. It has since proven to be completely unnecessary and without any benefit whatsoever.

The voters that adopted Article V section 19.3(b) of the City Charter in 1993 specifically excluded the possibility that an enterprise board would enter into contracts that are otherwise exclusively in the province of Council.

COURT PROCEEDINGS FURTHER SHOW WE ARE JUST SO SCREWED

On Friday, March 15, at a hearing at the justice center, Mike Beckstead testified under oath that the reason that electric utility is now on track to pay millions of dollars in capitalized interest (as an alternative to borrowing money in tranches) is because he was hoodwinked by bond salesman into thinking that borrowing money in smaller amounts when needed would discourage investors from buying bonds from later tranches. The possibility of inability to make future bond sales, Mr. Beckstead explained, would drive up the the cost of borrowing the earlier installments.

My heavens we are all so screwed. What a stupid, stupid thing to do.

First off, the electric utility rate payers, not the investors, have assumed 100% of the risk of all bonds.

Secondly, if borrowing and investing something like \$40 million (as opposed to \$140 million) doesn't produce sufficient revenues to pay off the \$40 million, then the city should cut its losses. The city is obviously in a position to cherry-pick the most lucrative service areas to begin with. If bagging the low-hanging fruit does not produce sufficient revenues, then the city should cut its losses and get out of broadband.

Nothing competes with stupid and we have it here in spades.

Mr. Beckstead also testified that the business case modeling did not account for significant reductions in pricing for DSL and Comcast products ... which is coming even without the added competition from connexion. Both Century Link and Comcast will be overjoyed to have all the people who want to set up servers at home jump over to connexion and it will greatly improve service for the rest of us who don't.

The city spent \$34,000 on a law firm to file two pleadings into case no 2018cv149. (1. Motion to dismiss, 2. Reply in support of the Motion to Dismiss.) This came out to an average of over \$1,000 per double spaced page. This amount does not include the expense of time that Carrie Daggett and John Duval devoted to the case. There was absolutely nothing difficult about these filings. There were no facts in dispute and the matters of law are all well known. Attorneys for Sherman and Howard were out to cut a fat hog and they did so.

Is there maybe just a small chance that, with this sort of expenditure going without any scrutiny at all, that the rest of connexion is going to be nothing but a pork-barrel feast for contractors, etc?

Heaven help the citizens of Fort Collins.

Eric Sutherland