

MINUTES OF SPECIAL MEETING OF KISSIMMEE UTILITY AUTHORITY, HELD
MONDAY, JULY 1, 1991, AT 6:00 PM, BOARD ROOM, ADMINISTRATION
BUILDING, KISSIMMEE, FLORIDA

Present at the meeting were Acting Chairman Gant, Secretary Bobroff, Assistant Secretary Lowenstein, Director Jones, Attorney Brinson, Mayor Pollet, General Manager Welsh, and Recording Secretary Rundio. Chairman Hord was absent.

A. MEETING CALLED TO ORDER at 6:00 PM by Acting Chairman Gant. Special Meeting was called to discuss Bond Counsel recommendations.

B. BOND COUNSEL RECOMMENDATION

At the last meeting General Manager Welsh had recommended that we include in the Scope of Services the Financial Advisor's assistance to staff in reviewing Bond Counsels, including Squire, Sanders & Dempsey, Counselors at Law, in this process. He had quoted some reasons for our going through this process because of some concerns in responsiveness by that firm in several instances. He had also been complimentary of the basic work performed by that firm and felt they should not be excluded, but that there was good justification for this review to ensure KUA was getting what was in its best interest in terms of the services of Bond Counsel.

Subsequently, Mr. Welsh said, he was pleased with the responses of Squire, Sanders & Dempsey (SS&D) to staff showing they had a tremendous amount of concern in the problems we had presented. They expressed a very good understanding of our concerns and a strong commitment to eliminating those concerns. They are familiar with KUA and its history, adding to continuity. He stated that there was a very high possibility, if we continued with the review process, Squire, Sanders & Dempsey would be recommended No. 1 to the Board because of their former relationship with us and their commitment to eliminating problems.

Going through the Request for Proposals (RFP) process would entail a great deal of effort and costs not only on the part of the above firm, but also on the part of all interested firms receiving the RFP's. Mr. Welsh, in the best interests of KUA, reversed his former position by recommending to the KUA Board tonight that we suspend the Request for Proposals for Bond Counsel services already mailed out. He requested direction from the Board to enter into negotiations and renegotiate the contract with Squire, Sanders & Dempsey concerning their ongoing services as Bond Counsel for KUA.

Mr. Welsh introduced Mr. Robert O. Freeman and Mr. Jack McWilliams, his law partner. Mr. Freeman assured the Board of their firm's understanding of past problems and their commitment and determination of eliminating them in the future

Mr. Freeman expressed his appreciation to the Board and staff for having the opportunity to present their side of the issue. He alluded to the fact they have a 20-year history with KUA (with the City of Kissimmee prior to that). He briefly highlighted the packet of past and current correspondence sent to the Board. He felt KUA was very important to them personally and professionally and stressed that they did not wish to lose KUA as a client. At a meeting between KUA Attorney, Ed Brinson, Joe Hostetler, Director/Finance, Mr. Freeman, Mr. McWilliams and Mr. Welsh, in-depth discussions were held regarding staff's concerns in having access to their firm in a more timely fashion. Mr. Freeman said staff's concerns were valid. The group explored ways and means of avoiding such problems in the future by assigning additional personnel, especially a tax lawyer, if their firm was selected. Mr. Freeman made a strong personal commitment to being available on a regular basis to ensure our needs would be met.

The above group had discussed the potential outcome of going through an RFP process. Having a long-time relationship gave the added commitment as opposed to going with a new firm. The cost of the RFP process entailed considerable expense and time. Mr. Freeman said they had concluded it would be more economical for KUA and the ratepayers, as well as for the professional community as a whole, not to devote the time and energy to the RFP process if the Board felt comfortable working with Squire, Sanders & Dempsey. Basically, he said, they would be more responsive and committed in the future; they are dedicated to KUA as a client and would like to serve KUA.

Mr. McWilliams, law partner, has assisted Mr. Freeman by giving his objective viewpoint in this situation. Mr. McWilliams had been requested to facilitate, if possible, repairing the relationship, bringing objectivity to the process. He felt that ironing out any problems was helpful to an ongoing relationship with KUA, ensuring the level of attention we deserve. He thanked the Board and staff for having been invited into this process and moving into the process of negotiating a contract and perhaps going through another bond issue.

In response to Director Bobroff's question, Mr. Welsh said that in the past Squire, Sanders & Dempsey has worked with us on a per bond basis, not on an hourly rate. Our intentions in contracting with any professional firm will be to negotiate a contract based on an hourly rate, not on a per bond basis. SS&D are quite amenable to this situation. Their blended rates average from \$160-\$170 per hour, with top rates being approximately \$235 per hour; however, we plan to negotiate the contract not on an hourly rate, but on the basis of a multiplier which we have in effect with many of the professional firms, which is more desirable and trackable. Mr. Welsh stated that we are putting in place in all of our contracts that we will have the option of auditing their records pertaining to billings, as a safeguard to maintain a good practice and working relationship. Also added into our current contracts with financial associates, engineers and accountants, is a Scope of Services. So, there is a contract and the multiplier associated with their raw salaries, and they must have written authorization from KUA to do that work for a maximum not-to-exceed amount before submitting any bills to us.

Director Lowenstein asked if SS&D had worked on a contract basis with us. Mr. Welsh said they worked on a per bond basis, receiving no compensation until we sold the bond issue. At that point they received remuneration for Bond Counsel work, some fees relating to the past bond issue, and others in anticipation of future work.

Squire, Sanders & Dempsey has submitted, at the General Manager's request, a statement to KUA for approximately \$5,500 for work done in the past and work in anticipation of a future bond issue; therefore, we are now starting from a zero base. Staff felt this was a fair fee for work performed over the past four years.

Director Lowenstein moved to authorize staff to negotiate a contract with Squire, Sanders & Dempsey as KUA's Bond Counsel; and authorize the Chairman and Secretary to execute the contract. Seconded by Director Bobroff.

Discussion followed about having the Request for Proposals withdrawn from the firms we had submitted them to before they expend considerable dollars in the process.

Discussion was had as to the flexibility of Bond Counsel attorney fees and how they are set up. Restrictions and/or limitations should be spelled out. A Scope of Services to be performed would be authorized. Therefore, at the time of the bond issue the firm would give us a proposal for a not-to-exceed amount. Mr. Welsh explained this would be done before the fact saying we anticipate this Scope of Services,

for a designated time frame, and we would be charged on an actual expenditure basis, up to a maximum not-to-exceed amount. If the Scope changes, fees would be renegotiated; if the Scope remains the same, the actual billable amount would be paid. Mr. Freeman explained that in dealing with other utilities, they submit an authorization letter attached to the contract, highlighting fees for comparable bond issues giving the utilities a range of what Bond Counsel fees were.

Mr. Welsh said we will be putting the contract together, and negotiating a Scope of Services, initially rather small, in providing assistance in developing the optimal financing plan to be presented to the Board at the August meeting. This may be followed by plans whether and if we will go on to the bond market and in what form, a negotiated sale or a bid sale. When that is determined, we will know the full Scope of Services for Bond Counsel.

Mr. Welsh asked the Board if the motion on the floor authorizes the Chairman and Secretary to execute this contract. The reply was affirmative, enabling the initial Scope to be determined.

Director Jones expressed concern over SS&D's billing for the approximate \$5,500. If the fee was based on the last bond issue, he questioned why it wasn't billed at the time. Mr. Freeman said that traditionally Bond Counsel worked on a contingent fee basis for an issuer and did not receive payment until the bonds were issued. Seldom was an agreement made as to the Scope of Services, with fees ranging from \$1.50 to \$2.50 per thousand principle amount of bonds issued. Oftentimes, Bond Counsel was not reimbursed for many additional hours of work. The rules are gradually changing towards contracts. Mr. Welsh added that certain functions subsequent to a bond issue, on which a bond attorney's opinion is necessary, are directly related to that bond issue, e.g., a bond resolution wording must be followed which requires an opinion, plus tax issues, etc. Mr. Welsh stated that a traditional way of billing was to let it ride in anticipation of the next bond issue and then set the fees to recoup everything that was done previous to that.

Motion carried 4 - O
Chairman Hord absent

Mr. Brinson suggested that the Board direct the General Manager to immediately send out notices via Fax to all firms we mailed RFP's, to avoid their beginning the bidding processes and costs.

Moved by Director Bobroff directing the General Manager to notify by Fax all firms receiving RUA's Requests for Proposals (RFP's) advising them of our decision not to pursue going out to bid for Bond Counsel. Seconded by Director Gant.

Motion carried 4 - O
Chairman Hord absent

Acting Chairman Gant thanked Messrs. Freeman and McWilliams for their efforts, time and input. All parties concerned looked forward to a congenial working relationship. Mr. Freeman acknowledged their appreciation in being accepted as KUA's Bond Counsel.

C. HEAR GENERAL MANAGER, ATTORNEY, DIRECTORS

GENERAL MANAGER

Mr. Welsh reminded the Board that at the last meeting the Board approved starting the July 24, 1991 meeting at 5:00 P.M. in anticipation of interviewing the short list of Bond Counsel firms. The Board now approved starting the July 24th regular meeting at **6:00 P.M.**

ATTORNEY - No comments

DIRECTORS - No comments

D. ADJOURNMENT: Meeting adjourned at 6:45 P.M.

ATTEST:



SECRETARY



CHAIRMAN