

**MINUTES
NOME COMMON COUNCIL
SPECIAL MEETING
October 6, 2006**

The Special Meeting of the Nome Common Council was called to order at 12:10 p.m. by Mayor Denise Michels in the City Council Chambers of Nome City Hall located at 102 Division St.

ROLL CALL

Members Present: Stan Andersen, Jerald Brown, Mary Knodel, Mary Bourdon

Members Absent: Jon Larson, Randy Pomeranz

Also Present: City Clerk Leslee Wessel, Deputy City Clerk Terrie Perkins

In the audience: Paul Korchin, KNOM; Louie Green, Jr., Adem Boeckmann, Tim Smith, Leo Rasmussen, Don Stiles

CITIZENS GRIEVANCES AND REQUESTS:

Leo Rasmussen, resident of Nome, stated in the 1970's they had many challenges to their elections. They had elections thrown out because they didn't have an election code that stood the test of court process. In that process they developed a code that had been excellent up until this particular election at recognizing what residency actually means to be eligible to vote in a municipal election. As they can read in the code, they do have to be a physical resident of the City of Nome in order to vote. When he went in the other day to vote, he made a presentation of his voter registration number and the fact that he actually resided in Nome. The election attendants said, "Oh, that doesn't matter, as long as you are registered to vote in the City of Nome, you can vote. He thought that was unusual because to be able to vote in the City of Nome, you have to be a physical resident according to their code. It is very well established in the state code, it has been tested in court that residency is a primary requirement of being eligible to vote in the state and municipal elections. He wanted to bring that to them because he has very good evidence that two people living in Dexter were allowed to vote in the municipal election. He suspects others were allowed to vote in the confusion over what has taken place with the NSEDC election. In this election process he can only guess that two of the close elections very well could have been influenced either for their 50% or under their 50% as part of being a municipally elected official. People who are residents pay taxes and have control over the taxes. People who live outside the city limits get a free ride if they are going to be allowed to participate in our elections and set who sits at this table, for their school system and for their utilities. The tax rates that are set are basically what they as residents have to pay. People living outside the city limits are not required to pay any of those bonds or other taxes with the exception of sales tax. He thinks several of the people who are going to be allowed to make decisions for their city could be influenced by the outcome of those who are allowed to vote from outside the city.

City Clerk Wessel stated they had two separate ballots as they all know for the election and everyone was allowed to vote, but those people who were not found on the voter registration list inside the city limits had to vote a questioned ballot. If you went to vote and your name was on the voter registration list that showed you were a registered voter inside the City of Nome you were able to vote. If your name was not the voter registration list you were issued a questioned ballot envelope. Those were then sent to the State election office to be verified and the ballots of those people who were not registered to vote inside the city limits of Nome were not counted for the municipal election. Mr. Rasmussen is right, if you are voting for a municipal office you have to live within the city boundaries.

C. Andersen asked if it is the State that verifies they are a registered voter. City Clerk Wessel stated the State verifies the voter registration. There are some circumstances where they have people who live outside the boundaries of the city who have a voter registration address within the city that they then vote in a municipal election because they are on the voter registration list. We haven't culled all of those out. She is not sure how they go about removing them from the voter registration list but she will find out.

C. Andersen stated if they know they are living outside the city limits they shouldn't be allowed to vote. City Clerk stated anyone can challenge a person's right to vote. C. Andersen stated they are going by the theory that if they are on the voter registration list, then they will allow that vote to count. City Clerk Wessel stated because they are not always going to be in a position to know the person or where they live, if they are on the registration list that has been given to them, they will let them vote.

Mr. Rasmussen stated over 20 % of the people on that voter registration list do not maintain residence in Nome and yet we are still using that list as 100% of those who voted or didn't vote. The people who voted that he knows particularly voted in this election that did not live in the town are on that list and they were allowed to pass. The reason they hire people to sit there and maintain the voter entry is to protect the ballot box. There were a considerable number of people who voted from outside the city limits. There are people who live in Oregon, Washington, Anchorage, Juneau, even in foreign countries at the time that don't show they are not a resident. 20% of that list is suspect for a municipal election and we are not doing anything to clean it.

C. Andersen asked what it says in the ordinance that qualifies them. Do they have to own property, do they have to prove they have lived here for two months or a year. City Clerk Wessel read the section of the code that discussed residency.

C. Andersen stated he knows of several that are living in Anchorage and are still voting here and he assumes the State is letting them choose to vote wherever they want to vote. City Clerk Wessel stated an individual cannot have registered voter status in two different places.

C. Andersen you have to show intent of coming back or something like owning a house here. City Clerk stated there are several instances where you have someone who has lived inside the city and has moved outside of the city and has not changed their voter registration. If it is personally known to someone and they wish to challenge that persons right to vote they can do that.

C. Knodel asked how long people have to challenge that vote. City Clerk Wessel stated they need to do it before that person votes.

C. Andersen asked the Clerk to do more research on this. City Clerk Wessel stated she would.

Louie Green Jr., stated he is challenging the qualification process on the NSEDC seat. What he is using to do this is a judgment that was signed by Judge Tunley in December of 1994 as a result of a lawsuit between Tim Smith and Norton Sound Economic Development Corporation. He referred to a section in this document under No. 3. It empowered the community to make a choice on which process they were going to use to elect this person for the board. The Nome community along with all the other communities under this judgment was to have a special election and this one took place in January of 1995 where they all met down in the Mini Convention Center. They voted for three different people that were on the ballot. The ballot consisted of not only the people who were running for the board but it also stated information on how NSEDC should conduct future elections for a Nome Director. When the choices were presented to them on the ballot there was one for an election by an existing or new fisherman's association from the community which may be joined by anyone who is eligible to receive a permanent fund dividend check at an address within the community and is at least 18 years or older. There were fifty votes placed on the ballot for that particular selection. The next selection was the election at regularly held municipal election by anybody residing in the community who is eligible to vote in a municipal election. There were 71 votes in favor of that. The third was an election by the city council at a regular or special meeting that is open for public comment on candidates who are running for the position. There were four votes on that. This judgment empowered all the communities involved in this CDQ to make their choice without NSEDC being involved. Once that choice was made by the community through a voting process in a municipal election the city council is set to certify that choice by the community members. Once it gets to that point and the candidate makes it through the gauntlet then they go to another process where they go to a board meeting or the board of NSEDC checks to see if this candidate qualifies according to their by-laws. Now if this judgment is to be what is considered law then under Section 3, subsection 2, the election at a regularly held municipal election by anybody residing in

the community who is eligible to vote in a municipal election is what they have been doing historically. Those are the rules that apply. If you are not a resident of the community then you shouldn't be on the ballot.

C. Andersen asked if this was voted on. City Clerk Wessel stated she was provided a copy of this information yesterday. When she received the candidate affidavit statements everyone for the municipal election was a registered voter and was qualified to be on the ballot. For the NSEDC seat they found that even though one of the candidates was a registered voter inside the city limits, he did not live within the city limits. She discussed the issue with Eugene Ascikik and with NSEDC's attorney. She told them she couldn't place this person on the municipal ballot because he doesn't live within the city boundaries. Their attorney stated it was fine with them if she did a separate ballot. As far as they were concerned it was the Nome community that would be eligible to run and vote for this position. She agreed to do a separate ballot for NSEDC and administer the election for them. As she understands it the City is just administering this election for NSEDC. She should have been provided with the information mentioned by Mr. Green at that time. There are big holes in this entire process.

C. Andersen stated ignorance of the law makes it okay. City Clerk Wessel stated there is no excuse. C. Andersen stated he is not putting the blame on her but now that they know this what is the attorney's opinion. City Clerk Wessel stated the City attorney is discussing the issue with NSEDC's attorney. In the by-laws it mentions member community—it doesn't actually say who is eligible and who isn't.

C. Andersen asked what the process is if they want to set that particular one aside until they get their opinion. City Clerk Wessel stated they have on the agenda today a resolution canvassing the election. She has provided them two resolutions one resolution has the NSEDC seat on it, one doesn't. She also explained other options. They could canvass the election by adopting the resolution that has all of the seats on it including NSEDC. They could declare the election results subject to further advice from the city attorney if it reasonably appears that a legal issue may exist per Nome Code of Ordinances section 7.25.120. She pointed out that the judgment she received yesterday does say in that paragraph that Mr. Green was referring to that the options shall include but are not limited to those three options he read. However, the information that he provided today that showed they actually voted on those options for this community might override that. The third option they might have would be to declare the winners of the election including NSEDC and then let anyone who wishes contest the election.

C. Andersen stated they could have a meeting Monday at noon to expedite this thing. C. Andersen asked when NSEDC is having their meeting. C. Knodel stated next week. City Clerk Wessel stated they have a meeting scheduled for Monday evening and they could discuss this at that time or earlier in the day.

C. Knodel asked who organized and held the meeting where they did the voting. City Clerk Wessel stated on the top it says Norton Sound Economic Development Corporation, Official Ballot, Nome Community Special Election, January 4, 2005. So it looks like it was held by NSEDC. Mr. Green added Tim Smith was involved as well. C. Knodel clarified it was just a community meeting, it was not an actual election. Mr. Green stated that is when they did the election. They voted to place someone on the board which turned out to be Pete Larson, but then they also voted on the process and it was through the municipal process they wanted to conduct their elections. There has never been a vote by the community to change the election process. He stated he thinks that the judgment is binding. The fact that NSEDC has a set of by-laws that states so and so can reside within the community and be on the board, that is their process after the City Council's process of certification takes place. Once that is in place then they move onto the board and the board decides whether they fall into those qualifications of the by-laws that NSEDC has in place. This judgment empowered all the communities to make their own decisions on who sits on this board and who's qualified.

C. Andersen asked if this was an official ballot of Nome or of the NSEDC. Mr. Green stated this was an official ballot that was printed up by Mr. Smith and the election was conducted in the presence of City Manager Paul Day. C. Andersen stated but it wasn't in an election like this. Mr. Green stated not like this. At that point there was a decision made that all future elections were to be under municipal election rules. Mr. Rasmussen stated it was a simplistic ballot that was used at that particular time. Mr. Green stated this judgment was put in place to have a uniform process throughout the region so that all

municipalities or villages had the same selection process. C. Andersen clarified that each village voted on one of those three. Mr. Green stated they did.

C. Brown stated it looks to him like the biggest question in all of this is who is allowed to vote and not who is allowed to be elected. Mr. Green stated that could very well be looked at that way, but if you can't vote in a municipal election how are you going to run in one. C. Brown stated they are appointing a representative and it doesn't necessarily mean that the representative has to live in the city. In reading the material he has been provided he doesn't see anything that led him to believe they couldn't say they wanted their representative to be from Teller or somewhere else. They could choose whoever they wanted and maybe only those people that reside within the city limit could vote on it.

C. Knodel asked if there is anything further in the judgment that defines who may run or who can be elected. C. Andersen stated his opinion is they shouldn't make decisions until they hear from the attorney. Mayor Michels clarified if they approve the resolution subject to further advice from the attorney they are still waiting for the attorney's opinion and anyone can still go through the process of challenging the election. City Clerk Wessel stated that is correct.

C. Andersen stated if they vote on this with proviso in it how do they get the proviso out of it. They have to meet again. City Clerk Wessel stated yes. They would have to get further advice from the city attorney with regard to if the resolution will stand as it is or they will need to do something else.

Mr. Green added that the advertisement was pretty inadequate. There was no advertisement to any of these people in the outlying areas of Nome saying they could either run or vote until just a few days before the election. NSEDC put a little thing in there stating that anybody from outside the city limits could vote for this NSEDC seat. He thinks it should have been noticed at least thirty days. That was included even in this judgment that when they advertised this community meeting that it was to be advertised in the Nome Nugget every week until that meeting was to take place. It didn't allow for anybody outside the city limits to also put their name on the ballot. He stated he and others made verbal challenges toward this before the election.

Adem Boeckmann stated it sounds like the first election was not a municipal election. It sounds like there was a group of people in the hall who decided what they felt was best. It wasn't a citywide election. They didn't ask the whole city should it be the fisherman's association, should it be the council, should it be a voter from the public. He believes it did go to the city this last time around. He received 260 votes. Everyone knows where he lives. He doesn't make a secret of it. Two years ago when Don Stiles wasn't sure he was going to run he went to the CDQ board and said community development. It doesn't say city development. It doesn't say village development. It says community development. He is a member of this community. He asked them what sense it makes for him to go against Dan Harrelson in White Mountain. They said none. He lives in Nome. He might only have an \$80,000 boat to pay taxes on as far as property, but they pay a lot in sales tax and they are part of this community. It is disturbing to see the community voted and they elected him as their official and he thinks that sets precedence to what the town feels.

Mayor Michels stated for clarification it is the by-laws that are very ambiguous and that is where they are having the problem with the process.

Mr. Boeckmann stated he hates to see this end up in court wasting time and money when it is clear what the board of directors feels and it is clear what the community of Nome feels. For the CDQ if you live within 50 nautical miles you are apart of the NSEDC organization and to try to exclude him on some little by-law mistake or this judgment makes no sense. He feels they should try to figure a way to get everyone involved in this and not exclude one group or another. They need to figure out a way to make it accessible to everyone that is part of that community to participate.

C. Andersen asked if it is the City's member or the NSEDC's member. If it is going to be the City's member they should be able to rule who qualifies or not for the future. If they have already done the election and it is fine with the city attorney then that is fine. Somewhere along the line he wants to find out if they are having a member representative if they set the rules or if NSEDC sets the rules.

Mr. Boeckmann stated that first election when they put Pete Larson on there, that didn't go to the whole community. That was just some people who showed up at a meeting. He counts 125 votes total for that election and he had 260.

Tim Smith stated he was the plaintiff in this case they are referring to. This was a stipulated agreement between the parties to end the litigation. They needed to get out of litigation; they didn't really want to go to trial. It is a pretty complicated situation.

C. Andersen asked who he is referring to when he says we. Mr. Smith stated NSEDC and himself. They agreed to be bound by this process. The judge ordered the president of NSEDC to hold these elections the city participated in it and the city certified the results of the election. So it was an official city action. It was in the judgment that the city was required to certify the election. It was an official city election. Nothing has been done since then to change those results. It wasn't his first choice. He didn't think this was the best way to elect this representative, but that was what the voters decided and as far as he is concerned it is still binding.

C. Andersen asked if the Council voted on that procedure. Tim Smith stated the Judgment required an election and the council certified it. The City could have decided not to do it that way and the president of NSEDC would have been required to hold another election. But they didn't do that. They certified the election. They accepted what the voters voted on.

C. Andersen asked how the election came about. Mr. Smith stated the President of NSEDC was required to hold the election. He qualified the voters; he supervised and oversaw the election. Mr. Smith stated the city participated as well. John Handeland was the main presenter and Paul Day was the city manager and they certified the results. Mr. Smith stated it was a way to end the litigation. It was a way to avoid going to court.

C. Knodel stated after they had this meeting where they had 125 people voted it came back to the city council and it was certified. Or was it just certified by the city officials who were at that meeting.

Mayor Michels stated on section 7 it says if the city council decides to have NSEDC represent the village in the CDQ program the city council will pass a resolution supporting NSEDC and provide a copy of that resolution to the president on or before March 7, 1995.

C. Knodel stated she would like to wait to take action.

C. Andersen stated in the meantime he would like to see that resolution canvassing the election in 1996.

Tim smith stated the certification is attached to the judgment. It should be in the city files, if it is not, it should be in NSEDC files. The intent was to be an official certification by the governing body of the community.

C. Brown clarified that this body must certify the NSEDC election. City Clerk Wessel read a portion of the letter from NSEDC—"The NSEDC member representative seat from Nome is up for election this year. By law this member representative has to be elected in a general municipal election and certified by the city council."

NEW BUSINESS

A. R-06-10-01 A Resolution Canvassing the Results of the October 3, 2006 Annual Municipal and School Board Election

A motion was made by C. Knodel and seconded by C. Andersen to approve R-06-10-01 canvassing the results of the election for the three city council seats, the two utility board seats and the two school board seats.

At the roll call:

Ayes: Andersen, Brown, Bourdon, Knodel

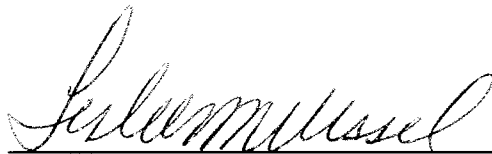
Nays:

The motion CARRIED.


ADJOURNMENT

A motion was made by C. Knodel and seconded by C. Andersen to adjourn. Hearing no objections the meeting adjourned at 12:58 p.m.

SIGNED AND DATED this 23rd day of October, 2006.



LESLEE M. WESSEL, City Clerk/Treasurer



STAN ANDERSEN, Presiding Councilman