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Members present: Daniels, Schaber, Meade

With a quorum present, Daniels called the meeting to order at 6:30 PM.

**Old Business**

**New Business**

Item 1. TempRES2021-14: RESOLUTION OF THE COUNCIL OF THE CITY OF MARION, OHIO EXPRESSING ITS FINDINGS AND DETERMINATIONS IN REGARD TO THE CITY AUDITOR'S FAILURE TO COMPLY WITH THE CITY OF MARION, OHIO'S PERSONNEL AND JOB CLASSIFICATION PLAN, AS ADOPTED AND COMMONLY REFERRED TO AS THE YARGER REPORT, FINDING SAID FAILURE TO COMPLY WITH ADOPTED LAW HAS RESULTED IN SIGNIFICANT RISK TO THE FINANCIAL WELL BEING OF THE CITY AND REQUESTING THE AUDITOR OF THE STATE OF OHIO INVESTIGATE AND TAKE ALL APPROPRIATE STEPS AS PROVIDED BY OHIO LAW AND DECLARING AN EMERGENCY (Daniels)

Mr. Daniels stated that they are meeting to discuss a position called "Internal Investment Auditor" and to allow Auditor Landon to rebut some claims. There is a job description that indicates the applicant have a 2-year or 4-year accounting degree and 2-5 years of experience. The most recent person in that position did not meet any of those requirements at the time that he was hired. This came to light because of an email scam that resulted in a \$4,000 loss due to an error made by the person who held that position.

<<Please note that Auditor Landon continued to have audio difficulties during this meeting. It can be difficult to hear/understand some responses.>>

Daniels – "At the time of hiring Carson, were you aware of the Yarger report? It's not a suggestion. It's not a guideline for elected officials. It's a law were you aware of that and aware that Mr. Carson didn't meet those qualifications when you hired him?"

Landon – "I am aware that the Yarger report exists. I have not gone through every page and everything <inaudible> that has been provided yet. Carson did have a degree in accounting. In my opinion, the elected official is responsible for making those appointments."

Daniels – "The information I have, and please feel free to correct me, is that Carson at the time of his hiring had not received his associate degree from Marion Tech. He just recently just received that after he resigned his position or was asked to resign or however that went. Is that correct?"

Landon – "Correct he was finished his degree."

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Daniels – “So he's finishing his degree?”

Landon – “He finished degree a few weeks ago. I don't know the exact date.”

Daniels – “Okay, but he was hired before that last year... maybe earlier this year?”

Landon – “No and I don't recall the date of hire. I want to say it was very early March.”

Daniels – “Could you give us the background of what exactly happened. I'd like to hear it in your words so that we don't confuse that with any hearsay or whatnot roaming around city hall.”

Landon – “<<inaudible>> It was initially a loss of two thousand dollars to the <<inaudible>> on this credit card which Carson and his family had since repaid. And it involved an email that appeared to come from the mayor directing him to go purchase two gift cards and he went and checked out a credit card without anybody in my office knowing what he was going to do. But then the very next day, he did tell. What and for some reason all of a sudden he felt it was strange and told me about it and then that's when I immediately turned it over to the police department.” <<Note: audio was very bad on this response and there could be errors in transcription.>>

Daniels – “I got about every other word from Mr. Landon. Do we have a better connection now?”

Clerk Rose – “Mr. Landon, from time to time. has had an audio problem. It actually has been better the last couple meetings but I'm wondering if he was using different equipment maybe the last couple meetings. If he could change back to that. I had the same audio problem here.”

Daniels – “Is that possible Mr. Landon?”

Landon – “Mr. Daniels, I don't have any other equipment.”

Clerk – “Mr. Landon, by any chance do you have some earbuds with a microphone on them that might come with your phone. Those seem to help people who are having problems.”

Daniels – “So, do I understand this correctly Mr. Landon? Carson received a scam email sometime earlier this year asking him to put on his (am I correct and saying put on his) credit card two thousand dollars and he would be reimbursed from the city?”

Landon – “It was a Monday this was just a few weeks ago maybe three weeks ago. He said it was on a Monday he got the email the first time. He spent the two thousand dollars on his own credit or debit card. I'm not sure which and it was under the premise that they were going to reimburse him. Then the following day on Tuesday is

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when he got another email directing him to purchase more and he is like I can't really, I can't do that, and they said well use their credit. They didn't specify what credit card or anything. I think and his presumption is that it was the city credit card, so he went check the city credit card out."

Daniels - "Did he have the authority to check out the city's credit card?"

Landon - "He did not."

Daniels - "He did not have the authority to check <it> out. Did you explain that he didn't have that authority?"

Landon - "When he first told me my jaw dropped because I was in shock that he didn't know any better. And so yes then I did tell him he did not have that authority and if he did get an email from the mayor appearing to be from the mayor that he should have come to us before he did something like that."

Daniels -- "His explanation was?"

Landon - "Well after the fact, after he had done that he agreed that that was the proper thing to do."

Daniels - "Let me ask you Mr. Landon, you were on council, and this is my memory. What people don't know; they don't know. But I'm quite convinced that you know and know what the Yarger report is and its significance. We had this with the council clerk's position maybe two or three years ago and we argued on it on city council for what seemed like six months, maybe it was. But it didn't have to do with who was picked with for the clerk's position. It had to do with altering the duties of that position within that Yarger report which are written in law without amending them through counsel. And that's what the argument was. And I think the council finally lengthily came to a conclusion that there would be some modification, not much, but they kept, I think, the position pretty much the way it was. So, I'm under the conclusion that you understand what that Yarger report is. Did you consult that Yarger report before hiring Carson?"

Landon - "No, we didn't look at the Yarger Report. We did look at the job description that is in the Yarger Report. We didn't look at report as a whole, if that's what you're detailing."

Daniels - "No. I would say that I wouldn't expect you to read it in total. It's a lot. But in a specific position, I would expect any elected official or anyone in a position of hiring someone to first read that Yarger report and find out what this position legally requires. Do you agree with that?"

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Landon – “Well, your legal question appropriate for the law director so I would refer your question to him.”

Daniels – “Well let me ask you this. In knowing that there is a legal requirement to hire someone with certain credentials -- if you knew that, do you believe it's acceptable for an elected official, in this case, to simply avoid that Yarger report or hire someone who did not meet those parameters?”

Landon – “All due respect, Mr. Daniels, I would refer you to the law director.”

Daniels – “OK, I'm going to gather that the law director would hire employees in his office that met the description of the Yarger report. Because as an attorney, I would expect him to know definitely and, as elected officials who've dealt with this, I would expect us to know that there are certain legal requirements for each position. Let me get to the point. Imagine a sheriff hiring on a deputy that did not have an OPOTA certification, which is a peace officer certificate. Imagine if I were to stick a driver in -- my occupation is truck hauling -- imagine if I stuck a driver behind the seat that had no commercial driver's license and they were to drive into a bridge abutment. I would harbor some of that responsibility because I shouldn't have hired that person and put them in that specific job. Would you agree with that Mr. Landon?”

Landon – “Mr. Daniels, I think the reference to the OPOTA certification is required by Ohio Law. We cannot hire a deputy or a police officer without that certification unless they're contingent upon going through that training. Which sometimes the Marion police department does to my knowledge hire police officers and then send them through that training and they don't have that training and then perhaps they just asked (?) very well on the on the examination, but they did not have the OPOTA certification. I don't know if they're hiring those people to send them to the OPOTA training academy because they had a degree or if they just passed the test. I don't think that reference really applies here, and I understand it is the elected official has certain responsibilities to make appointments within their office.”

Daniels – “Let's see. I'm trying to get you to understand that because you don't seem to understand it. You believe that you're the sole authority on the hiring of those in your office and you can choose who it is that -- at will -- you want to hire but they have to meet those legal criteria set before council. In this case, I think it was modified in 2007 and the Yarger report was in 1969. The city went to great effort to hire an attorney named ironically Yarger who went through every job classification and said these are the duties that we expect out of each and every employee and these are the minimum educational or experience criteria that we set for each employee as well. So, the sheriff could not hire a deputy, put them on the road, and give them the tasks of a deputy without an OPOTA certification. We as the city couldn't do it with an officer. I cannot put someone without a CDL behind a wheel that needs a CDL and doesn't have one. That puts me at liability. Do you agree with that?”

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Landon – “Mr. Daniels I wouldn't comment on your business dealings in an open public meeting.”

Daniels – “Well let me ask, what happens to someone who practices medicine without a degree or without a license? It's unacceptable. it's self-evident. there are certain criteria that each employee has to meet. and that's set by law. and that's the impetus of this meeting. it doesn't involve a mistake. Everyone makes those. Yes Mr. Landon go on ahead.”

Landon – “But you're saying the city has never hired anybody in a position in the city of Marion that would entail having a CDL and has a hire without <inaudible> already in place?”

Daniels – “I'm not on behalf of the city. I can't say whether there are other people in this situation or not and if the argument is to point the finger back at the city as cover for yourself, I think all of us have seen that.”

Landon – “No. That's not the intention but...”

Daniels – “Well what is the intention of bringing that up?”

Landon – “Because there's relevance, I mean you can't pinpoint one person in one office and then not look at the whole organization. if you're saying that you have authority to look at the whole organization in their hiring practices then I think that's what should be done.”

Daniels – “I think you're absolutely correct and let this serve as public notice if it's brought before this council that someone is hiring someone that is outside of the boundaries set before that law, that Yarger report, then I want to know about it and they'll be handled accordingly and forwarded to the proper authorities that can do something about it. And those individuals might be department heads that work under the mayor and that Mr. Schertzer would have to deal with that department head directly he would have to discipline them for breaking the law. I mean you were a city councilman, a legislator who wrote laws. If we can't follow our own laws what precedence does that set for everyone else in the community? Now maybe it was done in error. Maybe you didn't realize it. But the bottom line is you don't have carte blanche authority to hire who it is you want for any position there. That's the point I'm trying to relay to you. Let me ask another matter that comes to question that you may not have considered. The two thousand dollars that was put on the city's credit card, who do you believe is responsible for paying that? Mr. Landon, do you believe it's Carson or do you believe it's his employer, the city?”

Landon – “Mr. Daniels, that money was repaid by <inaudible, possibly “Carson’s family”> out of what they thought was the appropriate thing to do in response to his

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error and so to say that it should come out of the city's general fund, I don't have a comment on that.”

Daniels – “Well, let me say what the state of Ohio says about it. Carson was put in a position of executive authority. He, barring some exceptions, is legally not responsible for this mistake. It is us the city that is responsible because he was under our watch working for us on the clock when the mistake was made... hadn't he had been there he wouldn't have received the email I assume etc. But in the state of Ohio without written consent from the employee, you can't go back and charge them. Now federal law would say that it's a little more open that yes, any mistake you can charge them for as long as their wage doesn't fall below minimum. So, if you're docking their pay, it can't fall below minimum wage. But in the state of Ohio, they're not obligated to repay any of that. we're on the hook for all of it... for whatever the mistake is. So hopefully we in the future don't find ourselves putting someone who is unqualified for a position in a position that says say for instance has access to tax records with social security numbers and everyone's personal information at least to the extent of a tax return. Imagine that kind of data breach. Why we'd have everyone in the city at city hall wondering why is my social security out there number out there's creating credit card? Because there was a security breach in the auditor's office. So, your position is probably one of the most important in the city and for that there has to be exceptionally qualified people in every position... because that is the duty of care your office has. So back to whether the two thousand dollars should be paid by his parents or not, you know if they wish to volunteer that payment because it clears their conscience, you know I I suppose so. But if they've been given the idea that this is how I get my son out of hot water, I hope that is not the case.”

Landon – “Mr. Daniels, clear the air that is not the case in fact the next morning when I come in there was a check on my desk that Carson put there from his parents that they willingly did. I did not coerce. I did not give anybody the idea or any other such allegation that can be dreamed up. I did not do anything like that. That was something that they did on their own <inaudible>. The same that Carson did when he resigned. He was given the opportunity to resign by me bringing him into the office and asking him what he thought he should do and that's what he decided to do. He was not forced to resign, and he was not told he was going to be fired. There was no decision made yet. To clear the air on both of those.”

Daniels – “Well to me it seems, or it appears it is noble to pay that but there are other mistakes made throughout city hall. And I'll give you an example not in city hall. I can't remember of an employee unless it was a result of active fraud or theft etc. but in the commission of their duties, a mistake is made. This is a fraud that is not uncommon. There is a local store. I know the manager. The same exact an email sent out with the superiors letterhead on it. The employees get a card and buy amazon cards etc. and that particular case the management was fired that fell for that and the employees were not. They were reprimanded but the employees were not because it was thought that they did not reach the level of responsibility to be fired for such an

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offense. The management however was. They were paid enough to know better. So, all of us have a certain level of responsibility based on where we are in our job or our life etc. I can say I've had mistakes in my company. I have never made someone pay for that mistake. Never. I've had them back a truck over top of the car hood... clearly the employee's fault. I don't make them pay for those mistakes because it's part of business. When they're out making \$17-18 an hour, it is not their place to cover my company's mistakes, because we price mistakes and risk into the service we provide. And under these circumstances, given what Carson was given -- which was a fellow who had he didn't have two to five years of work experience. I think he was just out of high school for a year or so and attending college and hadn't graduated yet -- but I don't think that this loss and I hate to tell the taxpayers of Marion this, but this loss doesn't fall on Carson. It falls squarely on the city of Marion because the law says it does in the state of Ohio. In Alabama, it's a little different. But in Ohio that's what the law says. Even down to a workman's comp claim, we are responsible for the employees' actions even of their own folly is what the law would say. So yes, an employer is on the hook for quite a bit. We take the risk. And this money shouldn't be paid by his family nor him because he shouldn't have been there to begin with. And that is where I have the problem. We've had other discussions that are unrelated to this and related to it. All right, I can get past sending a check to the wrong place and having to go through the laborious process of getting the money back... \$1.28 million. All right. You can see past that to some degree. But when these mistakes begin to accumulate, it begins to look like a pattern. It's then not an accident. It's reckless behavior. And that's what I want to make sure is not happening here. And I hope it's not, but it looks that way. Do you have anything to add Mr. Landon?

Landon – “No, sir.”

Mr. Cooperider (904 Maynard) – “I heard you bring up the issue of security and the possibility of social security numbers, tax issues, and things of that nature... My question is for Mr. Landon. Mr. Landon, this is clearly an error that shouldn't have occurred. Unfortunately, the young man didn't go to his superior officers with this issue. It's a pretty rookie mistake. Whether he was getting ready to graduate the next week or had already graduated the week previous whatever, it's a little bit splitting hair. I don't think that the Yarger report is fully followed by any means. But back to the security issue and this goes out to probably the law director... the engineer's office. I'm just curious as to Mr. Landon how secure your office is on a physical standpoint? Who all would have access into your office that probably in all reality shouldn't have access to your office?”

Landon – “Well to be honest with you Tracy, I'm not really sure. There's an electronic monitoring system or a key access system to our office. That is administered by the IT department. And I do not know, or I do not have a record of who all has access other than I know my employees have access to the office. I know law enforcement probably does. to that extent, I'm not really sure. I know Treasurer Pannett recently requested access after-hours and weekends because apparently, he needs access there to work at

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night and on the weekends. So, I believe he does. Our IT department has access. In fact, they just come in over the weekend or not this past weekend but the weekend before that to reboot the server that is located in our office and obviously didn't notify me until after the fact. And I'm not entirely sure who all has access."

Cooperider - "Okay, so but there are others within city hall that would have access that you wouldn't necessarily... you just admitted that you didn't find out until after the fact that there's been folks inside your office. You didn't know until after the fact."

Landon - "Correct and like I said I don't control the electronic key card access system. That's something that IT does and is frankly beyond my expertise. I can request for somebody to have access or request for somebody to be denied. But IT doesn't report to me and so if they if they do or don't do something, that's their prerogative."

Cooperider - "So is there anyone else within city hall that could authorize access to your office?"

Landon - "Well, IT reports to the service director. <inaudible> not I guess fully understand the question."

Cooperider - "I'm just wondering if there's anyone that has untethered security access to your office that you would be not necessarily aware of."

Landon - "I think I'm not fully aware of who all have does not provide a report who has access can provide support of people hours who's the key card other than that I'm a list of who are approved and unapproved. I believe this went in with the IT person over a week ago over the weekend so I would presume as I used the IT person's key card for access. I'm not exactly sure how that." <audio breaking up every few words - inaudible.>

Cooperider - "So do they report that back to you as to who's going in and out of your office without your knowledge?"

Landon - "Not <inaudible> after the fact."

Meade -- "Just to clarify, I believe that the position isn't an "or" requirement of education or experience. It's "and"/ So, it's the two to two- or four-year degree AND two to five years of experience. So, it's not really a hair-splitting issue. It's quite a large gap because I believe that there was no prior experience."

Neff - "I just want to clarify this somehow. This ordinance are we trying to reference the Ohio Revised Code section 733.78 which would at the heading is violations by fiscal officers? Is that where we're... is that the point of this ordinance?"



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Daniels – “Mr. Neff, none of us are attorneys and over this matter and other matters in this office. We’ve had special commissions that we do not have including myself when it comes to legal advice, prosecutions, audits, whatever it takes to straighten the matter out. I can't give you a definitive answer on what direction that, if this is passed, that the Ohio Auditor's office would take. And that's why I believe they're best able to handle it and that would be their special audit unit or their special investigative unit. They can find these problems. They're attorneys. They're also former auditors. So, we can toss this around. I don't want to do that toss it around for the next two or three months with special. It's not ours to handle. It needs to go to the state, would be my assessment.”

Landon – “Can I ask the law director a question?”

Daniels – “Absolutely.”

Landon – “Mr. Russell, is there anywhere in the Ohio Revised Code that authorizes council to set minimum standards and hiring qualifications on classified positions and where does that explicitly state it? And what is your comment Revised Code chapter 733.01 referencing executive power in cities and such executive officers have exclusive right to appoint certain officers, deputies, and clerks within their departments?”  
<inaudible – audio very choppy and in and out.>>

Russell – “Mr. Landon, in response to your question, you're correct in that Ohio Revised code 733.01 provides the elected executive office holders the exclusive right to appoint the employees. You would be the only person that has any power to remove an appointed employee in the unclassified service and it's important to point out that the internal investment auditor is in the unclassified service. It's not a classified protected civil servant but is employed at your discretion. I think it's also because it was touched on the job description itself ends in the qualification section “any equivalent combination of training and experience which provides the required knowledge skills and abilities may be accepted”. So, the job description affords you as the appointing employing authority to give consideration to any equivalent combination of training. Your question is really focused on: is a legislative body, a municipal city council, enabled under Ohio law to put minimum qualifications in place. I have searched the research there's no case on point there's no court that has considered a question that has been able to provide me guidance in regards to the answer to that question -- whether a council can put in place a minimum requirement. I even searched attorney general opinions trying to find some authority that could answer that question. For that reason, we may want to look outside and inquire of this state auditor's office to see if they can provide any guidance. So, it's an open question needs to be resolved.”

Swanger – “I have a question for Auditor Landon. Do you feel any responsibility for Carson's lack of judgment?”

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Landon – “Well, I’m ultimately the elected official of the office. The things that have been in my office are my responsibility to take of.” <<inaudible>>

Swanger – “Okay and since Carson resigned have you hired a new person for that position?”

Landon – “We are in that process.”

Swanger – “Okay so in that process, are you going to look at the Yarger report in the sense that they need to have a two or a four-year degree and they need to have two to five years of experience?”

Landon – “Well again, I think I would refer you back to what Mr. Russell said where it gives the elected official discretion when making those hiring decisions. Again, this is my office as the elected official by the people of Marion to make those decision. Unfortunately, we had an employee who that may have made a very bad decision and is no longer here.”

Swanger – “Okay because I guess, what I really want to say is I’m not trying to go after you as a person. I’m not trying to go after your office. I’m not going after a political party in any way shape or form. But when I took this job, I took an oath and I believe we all took an oath. And let me just remind you that when we took that oath, we said that we would obey the constitution of the United States, that we would obey the constitution and the laws of the state of Ohio, and that we would obey the ordinances of the city of Marion to the best of our abilities. Now I believe that the Yarger report is one of those ordinances for the city of Marion. Would you agree?”

Landon – “Well again, I’d refer you back to the law director. I think that’s an unanswered question from the Law Director.”

Swanger – “Okay, I would just ask that all of us and remind all of us to pay attention to the oath of office that we took.”

Landon – “I take my oath of office very very seriously. In fact, my oath of office is hanging up in my lobby area at the entrance of our income tax office as a reminder of that.”

Daniels – “Let me say this. Based on the comments of Mr. Russell and Mr. Landon, here’s why I would suggest a slightly different reason why I would suggest that we send this to the auditor’s office down in Columbus. If the Yarger report has no precedence and isn’t enforceable in the state of Ohio because the state trumps us, we shouldn’t have it. But we don’t know that. We don’t know whether it’s upheld or not because probably no one’s ever decided this. We can’t decide it here. Much like an issue that we had back in I don’t know a few months ago with some ballots you know on a prosecution Mr. Landon if you’ll remember that. It was ruled by a judge in Hardin

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County that it was unconstitutional. However, it wasn't the city that wrote that law. It was the state legislature that wrote that law. And we are not in the business of deciding what's constitutional at the prosecutorial level or what's not. Much like I as a citizen wouldn't come to the conclusion that the law must be unconstitutional, so I'll go break it. I hope I'm right. But anyhow if a law is unconstitutional, we shouldn't follow it. We shouldn't have to follow it. It should be ruled and deemed unconstitutional. Now if your argument is that you have the sole discretion regardless of what the Yarger report would say because state law allows you that if that is your argument. And the city's argument is that it can set the qualifications of an employee of what it expects then that's something for the state to weed out and figure its own law out. So, I want to know is the Yarger report valid or is it not."

Meade – "I would also say while we're sending stuff down to the state auditor for review it would probably be beneficial if we send down the issue of the \$1.28 along with it under the section 5705-41 that's titled restriction upon appropriation expenditure of money certificate of fiscal officer and then the issue of the claim of 100 million dollars that was missing whatever term it was used, so that all of this can be figured out and then that way we can get a definite answer one way or the other. I don't know if we can amend that in this meeting or it would need to be amended if it passes tonight in the next meeting but I think that it would be I think it'd be the best."

Ratliff – "I had a couple questions myself. In my looking into this issue, I have uncovered you know side issues that are along the same exact line. And I want to ask a couple questions. It's also city law that was again given as a policy to the state of Ohio by one of the deputy auditors that the city is not allowed to have a credit card with a credit limit over five thousand dollars. I guess one of my questions is why does the city auditor's credit card have a credit limit of ten thousand dollars."

Landon – "I don't have an answer for that at this time."

Daniels – "Does the credit card is it ten thousand dollars, Mr. Landon?"

Landon – "To be honest, I very very rarely use the credit card. We got four credit cards when we first came in because we had to switch them over from the former auditor to the new auditor. And so, I can't honestly recall what our maximum is." <<inaudible>>

Ratliff – "It's also my understanding that it is against the law for us or public officials to use a credit card and to have a credit card that garners points and rewards but yet the Auditor's credit card has about 7,000 points on it, and I was wondering why that's taking place as well."

Landon – "Again, I don't have that answer."

Ratliff – "In looking at our city website today under the auditor section, it says if you want to report fraud to contact this employee. If the person hasn't worked for us and

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hasn't worked for us for you know a week or so, why are we still telling the people to use his email and to contact him if there is fraud within the city of Marion?"

Landon - "That website is not maintained by my office."

Ratliff - "Have you asked for it to be updated?"

Landon - "As busy as our office is right now, it hasn't crossed my mind reach out to <inaudible> to change the city's web site."

Daniels - "I think in this course of this argument, there's other concerns that would be valid. That might not be one that the state auditor would really focus in on is a website hasn't been updated. I could name 20 different examples of that in county and city and local government."

Mr. Ratliff - "I was just gonna say it's just a pattern like you were talking earlier that we have a pattern here. It's a pattern of making mistakes. It's a pattern of not taking ownership. And it's a pattern of not learning from it. And it's a pattern of doing it. Again, now I know that the city auditor had said before that we were in the process of hiring a new person. It was my understanding that a person had been hired. Am I under the wrong impression there? Have you not hired a person?"

Landon - "Well, there's a person undergoing background checks and credit card reports and such. That is a typical process so that that is a process that we implement."

Ratliff - "It's not in process that you're hiring them you have hired them and they're in a process before that they can start, correct?"

Landon - "Well I guess that is if you're wanting to play hairs on when you actually define hiring somebody. I don't define hiring somebody until they have gone through the process to be able to be hired and start."

Ratliff - "And it's not splitting hairs. It's called telling the truth. And does the new person that you are in the process of hiring, do they meet the minimum requirements?"

Landon - "Well I think you probably have the email with the resume already attached or maybe you haven't checked it. But the person has a two-year degree cum laud from Marion Technical College and interned in our office for three months at the end of last year. And did an outstanding job is highly recommended by everyone in our office works very well with everyone in our office and is familiar with all the processes and procedures there. And was trained by the former internal auditor, Perry Payne, who has nearly a decade of government accounting experience and 20 or 30 years of private accounting."

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Ratliff – “So you didn't answer the question does this person have two to five years experience. I know you had said something about three months. Does she have the minimum requirements to meet the job?”

Landon – “I told you she had a two-year degree and she interned in the office.”

Ratliff – “I don't know why you have a problem with giving answers and telling the truth. It is a yes or no answer. She meets the requirements, or she doesn't.”

Landon – “Well, we don't have a legal opinion on whether those requirements are valid.”

Ratliff – “Then Mr. Chairman in my 16 years on city council, no one -- no one -- has ever tried to be as overbearing and as bully as our current auditor. There are checks and balances in our system. There are checks and balances built into government. And when you circumvent checks and balances and when you have one rogue person that acts outside of any checks and balances, that's when you come up with problems. And that's what we have seen here is problem after problem after problem. “

Daniels – “Let me say this. I'll let you speak Mr. Landon just give me a second. The issue I have is currently it is a law in the city of Marion and to break that law to find out whether it's valid or not isn't the way to go. We do this through court. We do it the legal way. There are a couple three zoning laws in the city of Marion that I don't think could hold constitutional muster but if I want to change them, I'm going to have to take my bottom to court and I don't. I just as soon abide by them.”

Cooperider – “The first item that I want to talk about is all this additional discussion about sending it down to the state auditor. It seems like that this would all be tied in with the investigative committee and this all would be stuff that would be contained within that committee, wouldn't it?”

Daniels – “I'm not the chairman of that committee. I couldn't tell you one way or the other. They may decide to roll their inquiry up into this one. I don't know.”

Cooperider – “Yeah but that's not been brought to any floor so and we're kind of discussing issues that would be related to that and you know subpoenas could probably be brought in to bring out tonight's discussion because of that. So, is this the proper time to be discussing the things that they would want to be discussing in their committee?”

Daniels – “Well if you'll remember Mr. Cooperider, I was one that and I understood the members that did vote for it and the reasoning for it. I didn't vote for that committee on the first matter but that's not what we're here to discuss. This is over an entirely different matter.”

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Cooperider – “Well, I mean it was Mr. Mead said that he wanted to bring the \$1.2 million issue into this discussion. Well, that actually is very much involved with the investigative committee which was all about that error. So yeah, it's very relevant.”

Daniels – “Let me say this it's relevant, when the members which are Mr. Ratliff, Mr. Mead, and Mr. Schaber should...”

Cooperider – “Two of three have spoken now.”

Daniels – “... Should they decide that they would like to go this route instead of an endless amount of special committees, they can make that amendment on council floor or in here modify it and send it forward. They haven't done that. So when they do it's relevant to the discussion it's just a matter of semantics, I'm not being smart.

Cooperider -- “Okay and also since we're talking about all the legal things that are being followed not being followed. In the administrative code rule number 65 I think Mr. Russell's familiar with that one. Yes Mr. Russell? This question is directed to Mr. Russell.”

Russell – “What's your question?”

Cooperider – “You are familiar with in the administrative code rule number 65. Yes.”

Daniels – “He might be thinking about that.”

Russell – “Well what I'm doing is last time you quoted a section of Ohio administrative code.”

Cooperider – “Not Ohio administrative code... Marion city administrative code.”

Russell – “City of Marion code.”

Cooperider – “Administrative code, yes sir.”

Russell – “Okay. Yes I'm familiar.”

Cooperider – “Okay well and off the top of your head you know who all in that code is required to be in these meetings?”

Russell – “Well I think, and I'd urge council to review rule 65 that Mr. Cooperider is referring to. It's a provision that council can acknowledge to the mayor, the law director, the auditor the desire that they participate at council meeting. That's really never been...”

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Cooperider – “No sir. It's not a desire it shall be in attendance that would be the mayor the law director the auditor department heads. So and Mr. Russell, and I'm sorry to all the committee members and council members and everyone in attendance but I'm going to go back to March 9th of last year.”

Daniels – “No. No Mr. Cooperider... you don't want it you don't I'm not going to go back to March 9<sup>th</sup> of last year and start grieving every single grievance that someone may have. If you have a specific issue related to this matter as it sits now without any amendments, we'll listen to all you have to say.”

Schaber – “If I may ask the question about the individual family that wrote a check to the city for two thousand dollars. In the past, I get the police or fire department would receive a donation, there'd be an ordinance that would go before city council finance and then city council to accept that and then to spend that. Is that specific to the police and fire department because those are only things that come to my head right off the top that we get donations for? Would that be an order for this situation? I know that you said that the cities actually should be on the hook, but city received money do we have a trail, or should there be?”

Daniels – “Let me say this Mr. Schaber. This is my opinion. We'll have to ask the law director for that. My opinion is this. The check -- in the words of Mr. Landon if I can quote if I'm wrong please correct me -- that the very next morning the check was on his desk. That to me is a family under duress. I don't tend to put a lot of... I don't like decisions made under duress. We're the employer. We're responsible for the loss. I as a taxpayer, there's a part of me that would like to say well, they volunteered to pay the two thousand dollars. If they gave it to us, that's fine. I just my own personal self-speaking morally that was given under duress in my opinion, and I don't think that this 19-year-old -- I'm 50 so I call 19-year old's kids and I shouldn't -- but I don't think it's up to him or his family to endure that responsibility under something of this nature. I don't think he should have been in the position. He might make a great employee with a little more experience, and you know etcetera, but I don't think he should endure that amount of liability. Mr. Russell, do you have any opinion on that matter as Mr. Schaber put it out?”

Russell – “Well, observing past interactions as you pointed out when donations have been made and frankly it appears that the family in essence made a donation to the city of Marion, we should follow the same type of practices that we've used in the past. The auditor can certainly provide guidance in regards to where that money should be deposited given his practices so he should weigh in on it too.”

Landon – “I'm getting a message from Kim. She keeps getting muted... her have a chance to speak please.” <<inaudible>>

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Clerk – “I was going to cue her up as soon as this conversation got over and he was ready to call on her, Mr. Landon. So, you can go ahead and finish this and then Mr. Daniels can go to her.”

Landon – “Well, I just want to let her speak because I think she was going to speak some of what was being asked. If that’s okay, Mr. Daniels.”

Daniels – “That'd be fine. Let me interject this thought real quick and then we're going to Miss Hutchinson. If the family were contacted and they were asked of them, do you mean for this to be a donation? And they still said yes, then fine all right. They've had enough time. They know they don't have to pay it. But to think you have to pay it and then come up with it, that’s different than giving a donation. If it's going to be a donation because this somehow cleans their conscience, that’s their prerogative. But I don’t believe they should be left under the impression that it’s their obligation.”

Hutchinson – “As far as the ten-thousand-dollar limit on our credit cards in the auditor's office... It’s no different than any other department in the city. It goes five thousand dollars per credit card. Mr. Landon has one in his name and there’s one in my name and several departments borrow it and sign it out. So, we both have a limit of \$5 000. As far as the point system, I have no idea about a point system. We never asked for that on the credit card. That may be something that's offered but we’ve never utilized it. I have no idea how many points we'd even have. As far as Carson and his family paying for the two thousand dollars, he was never asked to pay it. He was never told that it was his responsibility. He came back from lunch and had it on gave it to me and I put it on Mr. Landon's desk to see what he wanted to do with it because he felt responsible for it and his family wanted to pay that. We have never asked him to do it. We never told him you know that was his responsibility. And he took that upon himself as well as to resign. So, I just wanted to put that out there.”

Daniels – “Miss Hutchinson, don't you think that if the family were given -- and they may decide to leave the \$2,000... I don't know the family -- but do you think that they might have had the impression that they owed this to the city and wanted to clear the matter up quickly? Or they couldn't...”

Hutchison – “Not from us, not unless they got that from the police departments.”

Daniels – “It's not from you or the police department. I'm not blaming you. I'm not saying the auditor gave them that impression or the office of the auditor gave them that impression. They could have easily come to it on their own accord without that.”

Hutchinson – “That may be. I don't know. I just know that we never asked him for it. We never even asked him for a resignation.”

Daniels – “Well, I would just like council to consider what they would like to do over the loss. Should the family be asked or told you’re not responsible for it? That’s



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according to Ohio state law. You can research it yourselves. If you want to donate it, then fine. If not, then fine.”

Hutchinson – “Yeah that's fine with us. We never asked him for the money.”

Schaber – “So to follow up, so someone from the auditor’s office will reach out to that family and then get before finance committee or that's accepting that donation. Because if I'm anything, I follow what's black and white and I had a little hissy fit when we was calling this meaning to order and how it was supposed to be done properly. And that's the way I like things to be done and if that's the process we've done historically, that's what's written in city code, state code, or whatever code you want to pull out and follow, then that's what we need to do. So, and I don't have a good feeling that we're going to follow that procedure.”

Daniels – “Mr. Schaber could you for my benefit say that maybe in a different way. It's not sinking in I'm sorry.”

Schaber – “Back to the family that are we going to ask them if they want their check back or if they say no it's a donation to pay for the mistake that their son or whoever he is made then the auditor's office I believe, and we've done it in the past when we accept donations bring forward to finance and full council an appropriation to accept that money. Because there needs to be a paper trail, I'm sure with every dollar we take in and spend. And then there needs to be an appropriation. I do believe that says this two thousand dollars went directly to whatever card that young man used.”

Daniels – “Okay. I understand my concerns this and not it doesn't conflict with anything you said. I just want to ensure that that family did not act hastily or think that their son was in some sort of legal trouble, and this was a good quick way to make it right in their minds. And it's generous and it might have been the right thing to do. Maybe not. The onus of this mistake though falls upon the employer. I would take the same responsibility if one of my employees fell for this, which is probably why I keep everyone away from a computer but that I'm teasing. So, I think the family needs to know there's no legal obligation for us to hold on to the money and if you wish to donate it to make it right if that's fine, we'll go through your process over the process and accept it as a donation. otherwise return the check to them.”

Schaber – “Yes, so then I guess this committee the finance committee would assume that if we do not see an appropriation for accepting a donation in that amount then the family took back the check.”

Daniels – “Yes.”

Schaber – “Fair enough. Mr. Daniels, it seems like we may have talked this out. I don't know but back to what Mr. Meade said about the special committee and the 1.38 million dollars and 100-million-dollar misstatement. If we would have went through

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or if we do go through with that special committee, this resolution that's before us today would be the exact same format that we would send down to the state. So, I would ask that, and I don't think it's proper for us to amend your resolution here but if we would to vote your resolution for approval and send it on to council with a recommendation to add the scope of what the special committee was going to try to accomplish."

Daniels – "Is that an amendment to this? It sounds as if..."

Schaber – "It would be, but I don't believe in committee we can amend or modify. It has to be done on the floor of council and I'm fine with that unless the law director says with confidence that we can change what was discussed here. Because I worry that if we do something tonight and it was a special meeting with specific conversation that we might be violating some open meeting laws and I don't want to get into that."

Russell – "I would recommend that the agenda item which is the resolution be acted upon without any changes. And I've heard the discussion as the select committee addresses its two items that it's identified as its scope and if it acts upon it, they may be on the same agenda at a council someday. At which time there could be two resolutions, or we can amend one resolution to incorporate whatever comes out of the select committee, but it should be done on the council floor not in committee."

Daniels – "Mr. Landon before the council decides or the committee, I should say decides its movement, is there anything you'd like to add to the discussion."

Landon – "No, I have nothing to add."

Meade made a motion to recommend to Council; Schaber 2nd; Roll Call: Ayes –Daniels, Schaber, Meade; Nays – none.

**tempRES2021-14 Recommended to Council (3-0)**

**Adjourn** With no other business, Daniels adjourned the special meeting at 7:37 PM.

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Chairman Daniels

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Clerk of Council