

Unofficial, non-verbatim transcript of Hudson City Attorney Catherine Munkittrick comments from Hudson Common Council meeting August 7, 2017, beginning approximately minute 22:25

<https://www.youtube.com/watch?v=qRs4ADgR5dM&t=1346s> with attorney comments beginning approximately 28:50

Hudson City Attorney Catherine Munkittrick:

“...Yeah, I’d like to make some comments just to give kind of a legal analysis first an overview of the resolution and then just comments on specific portions of the resolution. It seems to me that the resolution sets up a standard or policy of inclusion as opposed to what’s in the Constitution U.S. and Wisconsin Constitutions of non-discrimination and the civil rights laws and this creates a problem for the city precisely because of what Randy said all city elected officials, council members and mayor, have sworn an oath to uphold the U.S. and Wisconsin Constitutions and to the extent that inclusivity is something different than equal protection which is what the Wisconsin and U.S. Constitutions require and protect equal protection of the laws then you might be doing something, first of all, we don’t know what inclusivity means in the context of this resolution. And if it’s different from equal protection, then to the extent that it conflicts with equal protection of the laws with respect to persons in the city, it would be unconstitutional and so that is an issue that the city council members need to think about very carefully because under our Constitution, Wisconsin and U.S., it guarantees equal protection of the law not an affirmative, I mean, I don’t have a definition for inclusivity but it seems to me to be more of an affirmative action and at the, when the resolution was handed out at the last meeting and even within the context of the resolution it says it’s intended to be an active resolution. I’m not sure what that means but it leads me to believe that there will be certain steps that this resolution will be used to say okay now we want this in implementing the resolution, and it’s not clear at this point what action steps those would be.

The other thing is if this were to be adopted since inclusivity has no definition either in the ordinance or in the law, there’s no guidance, there’s no body of law, we have, I mean this is when you get into litigation you need to point to something that gives you guidance of how to enforce or interpret a resolution. There’s nothing out there, and you are required to act in

accordance with the Constitution, we have a body of law that tells you what those words like equal protection, freedom of speech, or freedom of religious liberty that type of thing, there's a whole body of law that helps, guides the council in carrying out its duties with respect to those Constitutional principles. There isn't anything for inclusivity.

Similarly, as Randy said, there's the Constitution and then there's a whole set of federal and state laws that protect against, you know, there's fair employment laws, fair housing laws and anti-discrimination or non-discrimination laws with respect to housing, there's a whole system of agencies that are designed, and that's their role in enforcing those laws, so if the city were going to adopt something like this and then take steps to implement it as it really states in the resolution my question would be is the city going to start enforcing this concept of inclusivity and if so, how is it going to do that. And there's no real law to guide the city.

And it's a cost item, I mean, if the city's going to get into litigation and enforcing this type of resolution or any ordinance that is adopted implementing this resolution, there's going to be a cost associated with that. And then you have to ask yourself, you know, is it necessary given the state and federal system for protecting these rights. The other thing is the city does have is, the city administrator stated, it has an equal employment opportunity statement in its personnel handbook, it affirmatively states that hiring and all employment decisions will be made based on merit, ability and qualifications for the position, not on any protected class, it states an intent and obligation to comply with all the laws, protecting against discrimination on all these class protected classifications, so that's already in the city personnel policy. The Hudson Police Department has a similar statement with respect to enforcing the law, equal law enforcement without regard to protected classes of persons, the library has a statement that all its rooms and facilities are available to everyone regardless of persons, so there's already a fair amount of policies in place at the city level for city government that protects the Constitutional rights and civil rights of residents and employees, etc., of the citizens of Hudson.

So I worry about the vagueness and just the untethered concept of inclusivity. It's not tethered to any body of law that we can use to interpret it, I worry about what steps are contemplated that may come before the council to

implement this resolution because it's stated that it's an active resolution. I even have concerns, about, for example, the title of the resolution it says it's going to, it's to endorse and implement an inclusion statement and plan within the city limits of Hudson? It raises the question are we talking about something that's going to affect and be imposed on businesses or, you know, other than the state laws, is it just about city government or is it something that's going to apply city wide to private business that's different from the laws that they are already subject to; and, if so, it's not stated in the resolution and adoption of the resolution, you would be signing onto something that you really don't know what it is, so that's a problem.

There's other just questions I have what does it mean to create equal opportunities, we have a system of hiring based on merit, ability, qualifications, creating sounds like something more than that with respect to the different classifications of people. I myself had the question when I read the resolution is safe city for all, it doesn't say sanctuary city, but it raises the question of will that be an ordinance that is proposed then as a means of implementing this resolution, and if so, that has consequences on the city. I'm not sure if it's been passed but there's legislation at the state level penalizing municipalities and governmental entities that adopt sanctuary city ordinances, and there is discussion at the federal level with respect to DOJ Department of Justice grants and so forth that they will be withheld. It's discussion at this point, but, and I don't know what our police department gets, but that would have an impact on the city.

I don't know what does it mean to be explicitly welcoming, I mean, when you're doing it in a resolution that's designed to be active, what is the next ordinance that's going to be proposed that, you know, implements that, those are the main questions and concerns that I have. And the cost, I guess, once you get into this area, well, the Constitutional implications, you know, potential Constitutional violations implications, and just the cost of any litigation that the city may get in in whatever implementation is pursued with respect to this resolution.

The other thing is, most times resolutions are not enforced as an ordinance, you know, it's not like there's any penalty provision or fine or anything like that, however, this ordinance says it's immediately effective upon adoption, and I don't know what that means, it's some resolutions are enforceable, like a

special assessment resolution, so I worry that someone would use just the resolution as it is as a basis for making a claim against the city. It's just so unknown, and in my view with the state and federal system, and the Constitutional system, and the policies in place, I don't know that it's necessary, and it opens up a Pandora's box of legal issues. ..."

Munkittrick comments end at about 39:25

<https://www.youtube.com/watch?v=qRs4ADgR5dM&t=1908s>