

**HECTOR CITY COUNCIL**  
**Special Meeting Monday, March 4, 2024 at 6:30pm**  
**Hector City Hall**

Meeting called to order by/time: Mayor John Riley at 6:30pm

Council Members:	<u>Position</u>	<u>Name</u>	<u>Present / Absent</u>
	Alderman 1	Samantha Brashear	Present
	Alderman 2	John Mosley	Present
	Alderman 3	Peggy Gregory	Present
	Alderman 4	Carey McGee	Present
	Alderman 5	Hannah D'Amato	Absent

Attorney: Bill Smith Absent

Media has been notified to announce Special Council Meeting.

**Old Business:**

Agenda Item A: COPS grant position

1. Legal opinion on hiring procedure.
  2. City hiring procedure.
- Mayor Riley handed out the email between him and the legal department at Arkansas Municipal League to each council member to review. See Exhibit A
  - The email discussed the question Mayor Riley had sent to the legal department at the Arkansas Municipal League on asking for legal opinion on the hiring process for the police officer position.
  - The City of Hector wanted to have a committee for the hiring process but from the opinion of the legal department if the city went this way it would be an open meeting under FOIA and be open to the public. The council could go into executive session, but the candidates could not go into executive session with the council members. Additionally, legal cautions against involving council members in employment matters, generally the council members are immune from liabilities if they participate in legislative processes. Legislative process is the ordinances/laws passed by council members which are generally exempt from any liabilities. The mayor or department head would participate in the administrative process and have the authority for hiring and firing. One exception is if an individual were terminated then that individual could make an appeal and that would include the council members.
  - If a council member in the legislative process participated in the administrative process, then that council member could lose their immunity and be open to being sued in their personal capacity, not as a council member but as an individual.
  - Mayor Riley handed out the City of Hector Police Department hiring procedure to each council member for review. See Exhibit B
  - Mayor read over the procedures; (1) phone interviews will be made by Chief of Police/Mayor to determine if candidate meet minimum qualifications; (2) interviews scheduled for those that meet minimum qualifications. Background waiver signed by candidate; (3) top two candidates will be selected based upon job description and experience for second interview; (4) full background on top two candidates; (5) Chief of Police to select a candidate in which to offer position.
  - This hiring process is the recommendation of the legal department of Arkansas Municipal League and the City's attorney Mr. Smith is in agreement this opinion should be followed.
  - No resolution required due to this being administrative but if the council wishes to make a motion to approve the hiring process, then it would go on the record.

- Motion made to approve the hiring process for the City of Hector as established by the legal opinion at the Arkansas Municipal League.
- **Motion presented by council member:** Motion made to approve the Hiring Process for the Hector Police Department as established by the legal opinion at the Arkansas Municipal League.
 

<b>Motion made by:</b> Carey McGee	<b>Motion 2<sup>nd</sup> by:</b> Peggy Gregory	<b>Vote:</b> Passed 100% (4/4)
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**New Business:**

Agenda Item A: Discussion about the rental of a fuel tank during the Eclipse

1. Consideration of a resolution for an appropriation for the purchase of a fuel tank storage
  - Several agencies are also renting fuel storage tanks due to the influx of additional people during the eclipse and the possibility of local areas running out and the city not being able to receive fuel in a timely manner.
  - Taylor Oil has a 275-gallon fuel storage tank, this is the smallest tank they have but the city can use it for emergency vehicles, street vehicles, lawnmowers, etc., until the fuel is gone. The tank can be locked up.
  - Today's price is \$3.46 a gallon including all taxes. This will include the tank and transportation of tank to Hector. The price could change due to fuel price fluctuations.
  - Due to the fuel being budgeted for 2024, there is no need for a resolution to approve an appropriation for the fuel amount. The amount may have to be adjusted due to fuel prices may go up or down depending on when the tank is received.
  - **Motion presented by council member:** Motion to approve the rental of a fuel tank storage tank for the week of the eclipse.
 

<b>Motion made by:</b> Samantha Brashear	<b>Motion 2<sup>nd</sup> by:</b> John Mosley	<b>Vote:</b> Passed 100% (4/4)
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Meeting adjourned:

Time: 6:40pm  
 Motion made by: Peggy Gregory  
 Motion 2<sup>nd</sup> by: Samantha Brashear  
 Vote: Passed 100% (4/4)

The next meeting will be held on March 18, 2024, at 6:30pm.

  
 Recorder/Treasurer

  
 Mayor

By signing, I agree that pages 1-2 are true and correct copy of the meeting held by the Hector City Council on March 4, 2024.

EXHIBIT A

EMAIL DATED 2/29/2024

BETWEEN LEGAL DEPARTMENT OF  
ARKANSAS MUNICIPAL LEAGUE AND  
CITY OF HECTOR MAYOR JOHN RILEY



Mayor Office &lt;mayor@hectorar.com&gt;

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**Legal Inquiry**

7 messages

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**Mayor Office** <Mayor@hectorar.com>  
To: Caleb Alexander <CAlexander@arml.org>

Thu, Feb 29, 2024 at 11:19 AM

Mr. Alexander,

I am doing a follow up on an inquiry that I sent a few weeks ago in which I haven't received a reply. My question is: would it be a violation of the Arkansas FOIA to establish a hiring committee to interview candidates for an open police officer position? I would not be on this committee. This committee would be composed of three council members along with the chief of police.

Thank you for your time in this matter.

John Riley

Mayor, City of Hector  
P.O. Box 194  
Hector, AR 72843  
Office: 479-284-5371  
Fax: 479-284-5101

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**Caleb Alexander** <CAlexander@arml.org>  
To: Mayor Office <Mayor@hectorar.com>

Thu, Feb 29, 2024 at 12:00 PM

Hello Mayor,

I do apologize, I'm not sure what happened. I searched my records and it doesn't appear that your inquiry ever made it to us. The short answer is possibly. A committee meeting with multiple council members would likely be required to be an open public meeting, specifically a special meeting. A court would likely find that such a meeting violates the FOIA if the steps to call an open public meeting are not followed.

The committee in and of itself isn't the issue. You can certainly have an advisory committee to assist with hiring matters. The issue would be the presence of the three council members. This would constitute a meeting under the FOIA's Open Public Meeting laws. See Ark. Code Ann. § 25-19-106. The Arkansas Supreme Court has held that when members of the city council meet, even if there are not enough members to form quorum, then the FOIA requires an open public meeting. If the meeting is not at the city's regularly scheduled monthly meeting, it is a special meeting. When a special meeting is called, the city has to give the press at least 2 hours' notice and it must be open to the public. *Id.* at § 25-19-106(b)(2). Also, such a meeting would have to be recorded. *Id.* at § 25-19-106(d).

Since you are contemplating a situation where several council members gather to discuss the hiring of an employee, I might suggest an alternative option. Instead of creating a committee, just call a special meeting (adhering to the special meeting rules) and then have the council go into executive session. The council can call executive session to consider the "employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee." See *Id.* at § 25-19-106(c)(1)(B). This would allow you and the council to discuss the candidates off the record. However, the candidates themselves could not be in the executive session, as the statute is very rigid in terms of who can be in executive session. *Id.* If the council members want to interview or question the candidates themselves, they would need to do so in the open public meeting.

As an additional matter, I'd caution against involving the council in employment matters. Generally, the city council enjoys legislative immunity for the decisions it makes and council members cannot be sued personally. However, employment decisions are not considered legislative in nature, but administrative, and there is no administrative immunity for hiring/firing decisions and council members could be held personally liable if sued. See *Leapheart v. Williamson*, 7056 F.3d 310 (2013). For this reason, the League generally advises that the Council refrain from making employment decisions. If the council makes an employment decision that is found to be unlawful, the council members may have to pay damages out of their own pockets, not the city's funds. Regardless of what option a city chooses to utilize, the city should follow its policy and apply it consistently.

Again, I'd like to apologize that you had to wait for this answer. I hope this helps,

**Caleb Alexander-McKinzie (He/Him)**

Legal & Inquiry Counsel

Arkansas Municipal League

Office: 501-978-6132



For legal inquiries please call 501-537-3797 or email [lawinquiry@arml.org](mailto:lawinquiry@arml.org).

*This legal opinion is based on the facts and information provided in your e-mail and does not constitute legal advice. Different or additional facts could result in a different opinion. Your city attorney is the appropriate official to investigate and provide legal advice concerning specific issues within your city.*

**From:** Mayor Office <[Mayor@hectorar.com](mailto:Mayor@hectorar.com)>  
**Sent:** Thursday, February 29, 2024 11:19 AM  
**To:** Caleb Alexander <[CAlexander@arml.org](mailto:CAlexander@arml.org)>  
**Subject:** Legal Inquiry

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EXHIBIT B

HIRING PROCEDURES FOR  
HECTOR POLICE DEPARTMENT



### Hiring procedures for Hector Police Department

- 1) Phone interviews by Chief of Police/Mayor to determine if candidate meets minimum qualifications.
- 2) Interviews scheduled for those that meet minimum qualifications. Background waiver signed by candidate.
- 3) Select top two candidates based upon job description and experience for second interview.
- 4) Full background on top two candidates.
- 5) Chief of Police to select a candidate in which to offer position.