

EMERGENCY TOWN COUNCIL MEETING

MAY 31, 1990

9:00 P.M.

An emergency meeting of the Wallingford Town Council was held on Thursday, May 31, 1990 in Council Chambers and called to order by Albert E. Killen, Chairman at 9:12 p.m. Answering present to the Roll Called by Kathryn J. Wall, Town Clerk were Council Members Bradley, Duryea, Gouveia, Killen, Papale, Solinsky & Zandri. Mayor William Dickinson, Jr., Town Attorney Adam Mantzaris and Comptroller Thomas Myers were also present. Council Members Holmes and Parisi were absent.

The Pledge of Allegiance was given to the flag.

Motion was made by Mr. Bradley to Discuss and Possibly Act Upon Payment to Hewlett-Packard Company, seconded by Mrs. Duryea.

Mr. Killen read correspondence authored by Mr. Robert Parisi into the record. It was addressed to the Members of the Town Council and read as follows:

To protect the voters of the Town of Wallingford, if the emergency invoice is paid, and the taxpayers of Wallingford have not received all items as per the bid specifications, then the people that have authorized this payment at the Board of Education will and should be held responsible to the Town of Wallingford for reimbursement to the Town as per the Town Charter, Chapter V, Section 6, p.35-36. Sincerely, Robert F. Parisi, Councilman.

Mr. Parisi also forwarded questions to be addressed by the Council during the course of the evening. They will be presented later in the meeting.

Mr. Killen also read an addendum by Mr. Parisi into the record. It read as follows:

I will not attend this meeting as a meeting is a protest by which this matter has been handled. We certainly have not been fair, and have not set a good example for the people we serve and whose money we are spending - Robert F. Parisi, Councilman.

Mr. Killen opened the floor for all questions.

Attorney Mantzaris stated that the meeting this evening was at his request to consider partial settlement of a claim. The claim being that of Hewlett-Packard against the Town of Wallingford Board of Education for payment of the computer system. Since there is no litigation at this point in time, this is not criteria for an executive session.

Mr. Killen asked if other companies will possibly sue us for awarding payment to Hewlett-Packard?

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Atty. Mantzaris responded that there is pending litigation against the Town of Wallingford by Datacom for the past year. The defendants in the lawsuit are Board of Education, Town of Wallingford, Infopoint and Hewlett-Packard. The suit is being handled by the Town's insurance attorneys.

Mr. Killen asked if Adam felt that this action requested this evening will have any bearing on the outcome of the pending litigation?

Atty. Mantzaris answered that, in his opinion, there would be no bearing on the outcome of the pending litigation.

Mr. Ferrara, Board of Education stated that, to the best of his ability, the problem first started a few weeks ago with some of the computer terminals breaking down for no apparent reason. Six terminals are on line for payroll and the business office, and currently we have only one terminal operating. We cannot find the root of the problem. We are not experts in this area. The computer has been in our possession for 1½ years. The first year we were extended free maintenance. We no longer have that service available to us. We are not only running out of computer space (memory) but we have overextended the system by inputting an additional 6 months of material on the computer that should have been purged. We need Hewlett-Packard expertise to check the hardware. We cannot run next week's payroll at this point in time. There is not enough room on the computer to do so. We are facing a serious situation in that we have no way of servicing the computer. We have made an attempt to have someone else service it, but to no avail, no one will service it for us. Hewlett-Packard will not talk to us due to the fact that the invoice remains outstanding. We thought the invoice had been paid by now. Mr. Ferrara is not suggesting that we pay for something that we did not receive. The Comptroller's Office has an inventory of goods received and Mr. Ferrara is requesting that Hewlett-Packard be paid for what we did receive. He felt that morally, and ethically, Hewlett-Packard should receive payment since the Board of Education has been in receipt of, and using their equipment for the past 1½ years. The amount owed is approximately \$124,544.58. The company is also invoicing us for an additional \$10,000.00 in interest. Mr. Ferrara felt that the interest could be dealt with at a later date.

Mr. Bradley asked if the computer terminals were, indeed dead?

Mr. Ferrara answered, yes, they were black. In fact, one was sent to an outside service to determine if, perhaps, there was a problem with the terminal itself. It was sent within the past 24 hours and we have not received word yet on the equipment.

Mr. Bradley asked if a capacity problem also existed?

Mr. Ferrara responded that the computer is sending a message stating that no additional information can be keyed in.

Mr. Nicoletti stated that it was definitely a hardware problem. A power outage was experienced a few days ago which may have played a part.

Mr. Nicoletti stated that an engineer from Hewlett-Packard was needed and, until the invoice is paid, we are going to continue to be denied service. We did not negotiate an ongoing maintenance contract with them.

Mr. Bradley felt that this problem needs to be dealt with on both a short term and long term basis. Short term to rectify the payroll problem, and long term, to grant payment for goods received.

Mr. Zandri asked why the terminals were not paid for?

Mr. Ferrara responded that the check to pay Hewlett-Packard was cut approximately 1½ years ago.

Atty. Mantzaris stated that the authorization for payment has been in his office since the criminal investigation started for the purchase of the computer system. He felt it was not prudent to pay the invoice in the event that the investigation by the Chief State's Attorney's Office should turn up a problem with the bidding process, itself which would have made the purchase illegal. The process ended in the spring of last year. Since that time, Atty. Mantzaris has been in contact with attorneys for Hewlett-Packard, and more recently the attorney in Connecticut representing them. In an attempt to end the stalemate in payment, a letter was sent November of 1989 stating that if the town wishes to keep the system it should be paid for (a copy of the letter was forwarded to all council members at that time. An additional copy of the letter was distributed by Atty. Mantzaris this evening). Following the letter was a meeting between the Comptroller, one of his staff, Atty. Mantzaris, Dr. Nicoletti, and Mr. Kari to determine how much of the equipment was actually delivered to the Town. This was done to satisfy an inquiry on behalf of the investigating committee as to whether or not all of the equipment had been received. In January of 1990 an inventory of the equipment was performed. A copy was distributed to all present. Atty. Mantzaris requested a vote for payment from the Board of Education, which was performed in April, 1990. Atty. Mantzaris then contacted the attorney representing Hewlett-Packard to inform him of the favorable vote by the Board of Education to grant payment.

He went on to say that upon contacting Hewlett-Packard's attorney, Adam asked if Hewlett-Packard would accept the \$124,544.58 as payment in full and honor its bid, and to also set up the balance of the system free of charge (Adam thought the system was not completely set up). He also requested an invoice since none had been received prior to this time. We were in receipt of a copy of equipment received along with its unit price.

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Atty. Mantzaris also informed Hewlett-Packard, although they did not manufacture the software for the computer system, the town would look to them if any problems surfaced.

Mr. Zandri was upset over the fact that the town is in receipt of the equipment for this length of time and have not come to a decision as to what should be done with regards to payment. He felt that a decision should have been made well over a year ago, whether the equipment should have been kept and paid for or returned. If the court case was going to make a difference, perhaps that is what should have been presented back then. What has happened now, is because of the delay in payment, we have developed another problem that we must deal with. To withhold payment because we did not receive an invoice doesn't make sense, the company should have been notified of this sooner.

Atty. Mantzaris pointed out that his letter to Hewlett-Packard of May 7, 1990 has not been answered. The request for the invoice, offer of payment and arrangements for the completion of installation have been ignored. In fact, he stated, we have received additional threats by the company's attorney.

Mr. Zandri viewed the threats as understandable. He stated that they bargained in good faith with expectations of payment. This problem is internal in nature and is of no interest to Hewlett-Packard.

Mr. Gouveia asked what has happened since the Board of Education voted on Adam's recommendation for payment to Hewlett-Packard?

Atty. Mantzaris explained that the four questions contained in his letter to the attorney representing Hewlett-Packard was his reasoning for non-payment. His concern was, what position would the town be in after the payment of the \$124,544.58? Hewlett-Packard was looking for more money than that.

Mr. Gouveia asked, based on the fact that Atty. Mantzaris's questions have gone unanswered, what was his recommendation to the Council on this day?

Atty. Mantzaris proposed that the town pay the \$124,544.58. Payment for equipment only.

Mr. Gouveia asked if the vendor was requesting additional monies?

Atty. Mantzaris answered, yes, interest.

Mr. Bradley pointed out that the town is dealing with a time bomb. We must remember that we are talking about a computer capacity issue. If the CPU goes down due to hardware failure, we have no access to payroll or personnel. He wanted to know what do we do when this occurs?

Mr. Zandri felt that was a separate issue.

Mr. Bradley agreed, but pointed out how badly we need to re

Mr. Bradley asked if Atty. Mantzaris's office has followed-up on his letter of May 7th, via telephone?, trying to schedule a meeting?

Atty. Mantzaris answered that a call was placed to the attorney's office on May 29, which resulted in a response that since no money had been received, no service will be provided. Adam argued that this was a separate issue and that we were preparing to pay. Our request was denied a second time on May 30th, unless payment was made immediately. Once payment was received, service would be granted immediately. Adam went on to say that there was no doubt in his mind that this bill should be paid.

Mr. Bradley referred to Adam's letter to the Mayor on November 13, 1989. On page 4, paragraph 2, Adam made two requests, by carbon copies, as follows:

1. ...the using agency to advise this office of its determination of the question of payment.
2. ...the Purchasing Agent to determine the quality, quantity and conformance of said system with the bid specifications, or that he cause same to be determined.

Mr. Bradley asked Adam if the two requests have been honored, and was Adam satisfied with the answers?

Atty. Mantzaris answered, yes, the requests were honored, the first, being the vote of the Board of Education to pay for the system, the second, the inventory by the Comptrollers' Office of the equipment received.

Mr. Zandri asked if the approval of the Council was needed for payment to be forwarded?

Atty. Mantzaris responded that he considered the request for payment as a claim since the amount requested exceeds the amount of the equipment sold to us. He thought that he did need the approval of the Council to pay a claim.

Mr. Zandri stated that he thought the dollar amount this evening was for equipment only.

Atty. Mantzaris stated that Mr. Zandri was correct in his thinking this.

Mr. Zandri then asked why approach the Council?, the Board of Education should decide the matter.

Atty. Mantzaris answered that the total amount Hewlett-Packard is looking for is approximately \$135,000.00 for this equipment. Adam is only looking for payment in the amount of \$124,544.58 which will be considered partial payment of the claim.

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Mr. Zandri went on to say that he felt the Board of Education had the authority to approve payment, and could not understand why the Council would have to second the approval.

Mayor Dickinson explained that it was due to the background surrounding this issue, it is a contested issue. Some members of the Council remain in disagreement with the purchase of the equipment. The town has a request for payment that exceeds, at this point, what the town attorney is recommending as a partial payment. If we pay this, and he then has to come back to the Council for additional monies owed for interest, it looks as though he could have jeopardized the entire issue by making a payment initially. This may not be the end of the situation.

Mr. Zandri still felt that the Board of Education has the authority to pay the dollars that are being requested here, this evening, since this was part of the bid specification that was approved through the entire process. It is coming out of their budget, it is not additional funds. It is the same amount that has been requested since day one.

Mayor Dickinson answered that it was not the dollars requested by the vendor.

Mr. Zandri stated that we are discussing the \$124,544.58 this evening.

Mayor Dickinson pointed out that that amount is not what is being requested by the vendor. They are requesting in excess of that amount.

Mr. Killen then asked if the motion that was adopted by the Board of Education on May 9, 1990 in order? Pay Hewlett-Packard namely, \$124,544.58, was that motion perfectly in order?

Mayor Dickinson answered that the motion is in order, that would be insufficient given the paperwork we had from Hewlett-Packard to pay the claim.

Mr. Killen asked why, then was the motion made?

Mr. Joseph Ferrara stated that the original motion was for \$140,000.00. We were then told to go by the inventory list of \$124,544.58 and come back with an approval again, after receiving approval for the \$140,000. He was not sure which number should be approved now.

Mr. Killen asked what the difference would be who approved it, if it is being held up somewhere? If the meeting was legally called and their (Board of Education) motion was perfectly in order, why wasn't a check drawn for \$124,544.58? They have all the right in the world to order the draft to be drawn.

Mayor Dickinson stated that the town attorney's office was not satisfied that all questions had been answered, and all rights of the Town of Wallingford were protected on this issue. As we know, there remains another ongoing lawsuit on this issue. A previous contract reflected \$140,000.00, Hewlett-Packard refers to a balance of \$133,000.00 and we have approval for \$124,544.58. There are a variety of figures, there are aspects of this issue that are still in contention...the town attorney is on record at the meeting as recommending payment in the amount of \$124,544.58.

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Mr. Killen pointed out that Hewlett-Packard has not put anything in writing stating that they will accept the \$124,544.58. What has happened in the interim to make it any more legal now than it was on the night that Adam made his recommendation to the Board of Education?

Mayor Dickinson stated that Adam has had discussion with the attorney representing Hewlett-Packard and would prefer to have answers in writing. It is obvious that this issue of the entire system crashing, and our not being able to issue checks, is playing an important part in this matter.

Mr. Killen retorted, that exactly is the point. There is no guarantee that if we pay, they will service our equipment. If the terminals had not burned out, how much longer would this have gone on? He is requesting, in writing, that Hewlett-Packard agree to service our equipment upon receipt of payment.

Atty. Mantzaris was assured by the company's attorney on May 30th that service would be rendered immediately upon receipt of payment.

Mr. Killen was not necessarily as interested in receiving service as he was in settling this issue with regards to payment.

Atty. Mantzaris stated that the company was seeking interest over and above the \$124,544.58 which he felt they were not entitled to. He thought that the interest should be dealt with through litigation.

Mr. Killen disagreed with Adam, pointing out that there is no guarantee that once payment is forwarded, that service will be rendered, due to the outstanding payment of interest. He suggested that the attorney representing Hewlett-Packard send something in writing, via fax machine, stating that service will be rendered upon receipt of payment in the amount of \$124,544.58.

Atty. Mantzaris will make this request of their attorney.

Ms. Papale agreed with Mr. Killen regarding a service guarantee.

Mr. Ferrara felt whether or not they render the service is not of importance, the issue is that we owe them the money for the equipment received.

An unidentified Board of Education member pointed out that someone should attempt to contact the C.E.O. of Hewlett-Packard to try and work this out. It should not continue between the two attorneys.

Mr. Ferrara pointed out that, by state law, the Board of Education's vote on the payment must be carried out. If an internal problem exists, you are still required to forward payment. He felt that the Council did not need to vote on this issue. The law is very clear regarding this matter.

Mr. Gouveia stated that the Board of Education does not appear before the Council at any other time during the year for authorization of payment of any of their budgeted funds, why suddenly this evening?, unless there is something else that we are not being made fully aware of.

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Ms. Papale felt that if the Board of Education paid this bill without the Council's knowledge, the Council would have felt that they were not being kept informed on the spending of funds for an issue such as this one.

Mr. Killen at this point in time, read Mr. Parisi's questions from the previously referred to letter. They are as follows:

1. Why can't the Comptroller's Office prepare the Board of Education's payroll?

Answer: It is a non-compatible system. It cannot be converted from Hewlett-Packard to IBM very easily. It would be time-consuming and require many program changes - Thomas Myers, Comptroller.

2. Why can't it be manually prepared?

Answer - It would be too time-consuming for 800 employees - Mr. Ferrara.

3. In checking, I was told that computer terminals can be purchased for approximately \$400 - \$500 each, why must we pay for the computer at a cost of \$124,544.58 at 9:00 p.m. at night, with no one here to comment?

Answer - Mr. Ferrara stated, because we owe them the money. Ms. Papale agreed.

Mr. Zandri pointed out that this was strictly an informational meeting.

An unidentified member of the Board of Education pointed out that it would be foolish to buy new terminals. We must find out why they are burning out.

Atty. Mantzaris stated that the three questions asked by the absent Council Member Parisi sheds light on why he (Adam) considers this issue a claim. He pointed out that Mr. Parisi concurred with his belief that this money should not be paid (\$124,544.58).

Mr. Zandri felt that it was not up to Atty. Mantzaris to decide this. He (Adam) was imposing his opinion upon the Council to decide this matter based on his feelings. Mr. Gouveia agreed.

Atty. Mantzaris reiterated the issue of the extra \$10,000.000 in interest Hewlett-Packard was seeking. In his opinion, this constituted a claim, and therefore, the Council must approve payment on a claim per the Charter of the Town of Wallingford.

Mr. Killen stated that the Council take no action and let the Board of Education ask, once again, that the check be drawn and forwarded to Hewlett-Packard for payment.

Mr. Ferrara pointed out that the check has been drawn, but the town attorney will not forward it out.

Mr. Killen reiterated that the Council cannot get this accomplished if the Board cannot do so itself.

Mr. Ferrara stated to Mr. Killen that the town attorney is an employee of the Council.

Mr. Killen informed Mr. Ferrara that the Council is not an administrative body but a legislative one. He cannot issue a direct order to anyone other than the town council secretary and the town clerk.

Mayor Dickinson felt that the issue is, that the town attorney feels that he, on his own, cannot authorize payment, since he views this as a claim. Only the Council, under the Charter, can authorize settlement of a claim.

Mr. Killen asked why it is being recognized as a claim if we have received the equipment and are willing to pay for it?, the claim will arise afterwards when the matter is addressed as to the interest.

Mayor Dickinson stated, it is due to the vendor in question not just billing us for the equipment received. We are getting a request for monies in excess for other reasons. The town will pay part of that, but it doesn't mean we are not going to pay more. Hence the request for authorization for partial payment of this claim.

Mr. Killen asked if there was anything in writing from the vendor that stated this to be a claim.

Mayor Dickinson answered that the only figure we have received from the vendor is \$133,000.00, at no time has the vendor submitted any paperwork to us with the figure of \$124,544.58 on it.

Mr. Killen asked what the \$133,000.00 is based on?

Mayor Dickinson answered interest and equipment.

Mr. Killen stated that the Council would vote to reject the interest and to only pay the \$124,544.58.

Mr. Killen felt that this was being dealt with in a long, drawn out process. Why deal with this now, 10:00 p.m. at night, when this issue has been one for quite some time.

Mayor Dickinson answered that it was due to the fact that the terminals had burned out recently, otherwise it would have been handled in proper fashion and before the Council at a regularly scheduled meeting.

Mr. Killen felt that had the terminals not burned out, perhaps a year from now, it still would not be resolved and we would be owing Hewlett-Packard a great deal more money.

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Ms. Papale asked if the Council had a problem voting on this issue?

Mr. Bradley did. He felt that the Council should not be voting on this. He realized it was not the full bid spec., but it is in inventory. He asked if Hewlett-Packard had recognized our inventory?

Mayor Dickinson answered, not to his knowledge.

Mr. Bradley asked if we could get Hewlett-Packard to recognize this inventory?, can we sit down with them and agree with it?, can we get them in here on Monday to meet with them?

Mayor Dickinson reminded Mr. Bradley that no response has been received from Hewlett-Packard's attorney pertaining to the letter sent by Adam on May 7, 1990.

Mr. Bradley questioned why can't someone get on the phone and arrange a meeting? (he offered to do this if Adam could not).

Atty. Mantzaris asked if it was too impossible to ask the Council to vote the way that he is asking them to?, to vote in favor of a partial payment of a claim?

Mr. Killen did not view a bill for items received as a claim. If upon payment of the \$124,544.58 the company filed a claim for the additional \$10,000.00 in interest, he stated that he would be more than happy to call a meeting to vote on settling the claim.

Mr. Ferrara concurred with Mr. Killen in stating that the Board of Education's position is that of the Council's.

Mr. Solinsky asked, if the original bid price was \$140,000.00, how did the educational discounts fall in?

Mr. Ferrara explained, they were discounts of the State of Connecticut due to their bidding process.

Mr. Nocoletti stated that there are educational discounts extended to educational institutions by Hewlett-Packard, which is part of the GSA federal bid number which allows them to extend this discount.

Mr. Solinsky asked if Hewlett-Packard was aware of this when they bid?

Mr. Nicoletti was not sure. The difference between the \$140,000 and the \$124,544.58 was due to two reasons. One, the educational discounts, and two, we did not receive all of the equipment because it was not available at the outset, and we could not backorder it since we did not pay our bill.

Mr. Solinsky then asked, if they knew that we would get these discounts, why didn't they reduce their bid and be more competitive?

Mr. Nocoletti had no idea why.

Mr. Solinsky then asked why the Board of Education voted to encumber the remaining \$15,774.00?

Mr. Nicoletti guessed that perhaps it was due to the fact that the Board wanted to purchase additional equipment, or the equipment that had been absent from the order.

Mr. Solinsky pointed out that the \$124,544.58 is for equipment received, the remaining equipment not shipped will cost \$5,000.00, educational discounts amount to \$10,000.00, yet the Board encumbered \$15,774.00?, the \$10,000.00 would not have to be paid. Why would it be encumbered?

Mr. Nicoletti repeated his statement above.

Atty. Mantzaris stated that there are allegations in the Datacom lawsuit against the Town that the purchase was made in violation of the Connecticut Unfair Trade Practices Act, claiming misrepresentation, conspiracy to commit fraud, etc., against the Town, Purchasing Agent, Board of Education, Infopoint and Hewlett-Packard. That concerns the very same equipment that is here tonight. If those allegations are proven, then the purchase was.... then we may not owe anything. That is why this becomes a claim not merely payment for merchandise received. This is why Adam decided to call this meeting.

Mrs. Duryea stated that she was confused over the fact that Adam had called this meeting to ask the Council to vote on an amount that will ultimately be rejected. She asked Adam to send the check that he was authorized to send in the first place, and then come back to the Council for extra money should he need it.

Mayor Dickinson reiterated that under the Town Charter the Town Attorney cannot settle a claim without the Council's approval.

Mr. Gouveia felt that this was not a claim. He stated that he heard Adam state this evening, that the town was paying for \$124,544.58 worth of equipment delivered, nothing with regards to a claim. The town was paying only for equipment delivered. No interest, not for equipment that was not delivered. In that case, Mr. Gouveia felt that no action should be taken by the Council. The Council could make a motion not to authorize any payment for anything other than what was delivered.

Mr. Killen stated that if the Council authorized the settlement of the claim, the Council, in effect, should have to come up with the funds to do so. He instructed Atty. Mantzaris to send the check to Hewlett-Packard.

Ms. Papale asked if the check will be mailed out tomorrow if no action were taken by the Council this evening? She asked Atty. Mantzaris if he will authorize the payment?

Atty. Mantzaris would not, since he believes this is a claim.

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Ms. Papale asked the Council, if Adam refuses to authorize payment, what is the problem with the Council voting to authorize payment on this claim?

Mr. Zandri stated that this payment will not settle this claim. Regardless if the Council voted in favor of partial payment of this claim, it will not settle this issue as far as the claim is concerned.

Atty. Mantzaris continued to state that he is awaiting recommendation from Hewlett-Packard's attorney to determine the town's position in this matter. This is his reasoning behind requesting partial payment this evening.

Mr. Killen again requested Atty. Mantzaris to forward payment, and if they wish to pursue the remaining funds, then we will deal with it.

Mr. Solinsky made a motion that the Council does not recognize this as a claim, and that any amounts owed should be paid for merchandise received. Seconded by Mr. Zandri.

Atty. Mantzaris stated that he would accept a vote on this motion.

Mr. Bradley included that equipment received is based upon the inventory list which was conducted by the Town of Wallingford's Internal Auditor.

Mr. Bradley referred to page 4 of the memo dated November 13, 1989 by Adam Mantzaris. As far as quality, quantity and conformance of said system with the bid specifications, has Mr. Dunleavy responded to this request, and what was his response specifically?

Atty. Mantzaris stated that Mr. Dunleavy has not responded.

Mr. Bradley pointed out that the Purchasing Agent, Mr. Dunleavy has not responded to the issue that it was properly purchased and, therefore, will compromise any defenses of the Town in said litigation.

Atty. Mantzaris stated that the Purchasing Agent did not check the equipment himself, Bob Ronstrom from the Comptroller's Office did. The inventory performed by Bob shows that it conforms to bid specs as far as quality, quantity and conformance.

Mr. Bradley asked Atty. Mantzaris to state for the record that it does conform to bid specification.

Atty. Mantzaris answered: The inventory performed by Bob Ronstrom, the equipment shown on that inventory, conforms to quality, quantity, well, in one respect, there were three more items than were bid that we are not accepting those. The inventory performed merely checked that the quantity of the items received conformed with the bid specifications. The quality and conformance with those specifications was a matter for the people of the Board of Education to certify to the Purchasing Agent. There is a particular form for that, I'm not sure whether it has been completed and forwarded to Mr. Dunleavy. I would suspect that it has been since the equipment has been in use for 1 year. I will check that with the Purchasing Agent.

Mr. Ferrara answered: I suppose that the Board of Education can do it.

Mr. Thomas Murphy explained that when the equipment is received, the paperwork, purchase order, etc., is sent back for approval for payment, it therefore, had to been done since the check was drawn.

Mr. Myers, Comptroller explained the process to the Council without the aid of the microphone system. His comments, therefore, went unrecorded.

Atty. Mantzaris stated that if the Council votes in favor of the motion, and the form is filled out, payment will be forwarded.

Mrs. Duryea asked Atty. Mantzaris if he, himself, sent out the check, what would the repercussions be?

Atty. Mantzaris responded that he considers this entire issue before the Council this evening as a partial settlement of a claim. You don't believe that it is settlement of a claim.

Mrs. Duryea repeated her question.

Atty. Mantzaris responded, it doesn't operate like that, I don't send checks out, I don't do that on my own.

Mayor Dickinson interpreted Mrs. Duryea's question to Atty. Mantzaris to be, if he (Atty. Mantzaris) authorized the payment, what could happen? What could happen, what the potential is, is that someone could argue that it is a violation of Charter because it is a settlement of a claim and Adam did not have the approval to do it.

Mrs. Duryea asked Mayor Dickinson if he meant that Hewlett-Packard would not accept the \$124,544.58?

Mayor Dickinson answered, no, someone in town could argue that it was a violation of the Charter of the town.

Mr. Bradley and Mrs. Duryea repeatedly asked the Mayor who that party(ies) could be?

Mayor Dickinson answered that it could be any citizen who felt that the Charter had been violated.

Mr. Killen then asked those members of the Council who did not recognize this issue to be a claim to raise their hands.

All members present raised their hands.

Mr. Killen made a motion that the Town Council does not recognize this as a claim, therefore, no action is warranted by this Council, seconded by Mr. Bradley.

It was brought to Mr. Killen's attention that a previous motion was still in existance and, as of yet, unacted upon.

Mr. Killen asked that Mr. Solinsky withdraw his motion unless the Council was prepared to vote on it.

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Mr. Solinsky requested that his motion be voted upon. He repeated the motion for all present.

The motion was made by Mr. Solinsky that the Council does not recognize this as a claim, and that any amounts owed Hewlett-Packard should be paid for merchandise received, seconded by Mr. Zandri.

Mr. Gouveia had a problem with the second half of the motion. He felt that the Council was being asked to do the job of the Board of Education and felt that it should not have that responsibility. He had no problem with the part of the motion that means, the Council does not wish to take any action on this matter. If they need a motion, as he stated before, that the Council does not authorize anything other than what was delivered, that is fine.

Mr. Ferrara stated, the bottom line is, they won't issue the check unless the Council says yes, if not, there is no check. It remains a catch 22 situation.

Atty. Mantzaris stated that there was a potential for a claim against him to the Board of Ethics if someone should say, "Hey, Adam, that was a claim, you should not have paid it, I don't care what the Council said, some citizen would say. There is also a problem as an attorney to a grievance committee, maybe, for violation, same idea. I am not asking the Council to do something unethical or illegal, your motion, Mr. Solinsky would protect me".

Mr. Solinsky asked if Mr. Killen's motion would suffice.

Atty. Mantzaris answered, no, his motion calls for no action.

Ms. Papale asked why a motion cannot be made to protect the Town Attorney's Office?

Mrs. Duryea had no problem with protecting Adam, she didn't understand what exactly was happening.

Mr. Killen stated that the Council could not defend Adam. If charges were brought against Adam, and he has been charged with appearing before the Council and stating this issue as a claim, and the Council did not recognize it as such, nothing unethical was done. We are exercising our right under the Charter to say that we do not believe this to be a claim.

Atty. Mantzaris added to Mr. Killen's statement that as a matter of record, we the Council think that you, Atty. Mantzaris should pay it.

Mr. Killen denied the statement made by Atty. Mantzaris as being one which the Council endorses. It clearly does not think that Adam should pay the claim, since it does not recognize this matter as a claim.

Mr. Killen stated that the Council had no problem with paying the invoice, however, when it is being disputed as being a claim, it does present a problem since this Council does not view this as being a claim.

Mr. Solinsky stated that if the town has received something, then the vendor should be paid.

Mr. Killen stated that it did not make any difference whether the Council authorizes Adam to pay it or not.

Mr. Solinsky answered, the Council is not authorizing payment, it is saying that the Charter should be upheld and the vendor should be paid.

Mr. Killen asked why the Council should have to put something to that effect into words?

Mr. Solinsky felt since the Council is the Fiscal Body of the Town. If a vendor is owed money, it should be paid.

Mr. Killen again, impressed upon Mr. Solinsky, that the Council had no argument with that aspect of the issue. The issue at hand is whether or not this Council agrees that this is a claim.

The Town Clerk, Kathryn J. Wall called the roll for a vote on Mr. Solinsky's motion.

VOTE: Holmes & Parisi were absent; Papale, Solinsky & Zandri, yes; all others, no; motion failed.

Mr. Bradley made a motion that the action before the Council this evening not be accepted as a claim. No second, the motion failed.

Mr. Bradley made a motion to adjourn the meeting, seconded by Mrs. Duryea.

VOTE: Holmes & Parisi were absent; Bradley, Duryea & Killen, yes; all others, no; motion failed.

Mr. Gouveia made a motion that no action be taken by the Council on the payment to Hewlett-Packard in the amount of \$124,544.58 for equipment certified to be delivered by the Comptroller's Office and also that no payments be authorized at this time for any other claims by said vendor.

Mr. Gouveia explained that he did not wish to take the prerogative away from the Board of Education to authorize payment of the \$124,544.58. He asked that the Council not take any action on the payment. In addition, he is asking that no payments be authorized at this time for any other claims made by this vendor.

Ms. Papale asked Mr. Gouveia if the Council was here tonight discussing this just for the sake of taking the prerogative away from the Board of Education?

Mr. Gouveia, answered no, we are here to discuss whether or not we should pay for anything other than what was delivered. We should not, we were told today that \$124,544.58 worth of merchandise was delivered, the Board of Education has authorized payment of that, they have it in their

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possession, they are using it (the equipment), they are satisfied with it, they have authorized payment. He also said that, if this vendor is requesting further monies above and beyond what was delivered, at this time, we the Council do not authorize it. This does not preclude the Council from authorizing that at a future date. This is what is being said in the form of the motion.

Ms. Papale stated that she wanted to make sure that the check is mailed out tomorrow. She felt that the Council should take Atty. Mantzaris's word that the check will go out if the Council votes in favor of the action.

Mr. Killen reminded Ms. Papale that there is no guarantee to this effect.

Mr. Gouveia asked Atty. Mantzaris if his motion satisfied him.

Atty. Mantzaris answered, it did not.

There was no second to the motion, therefore, the motion failed.

Mr. Ferrara suggested the Council make a motion to authorize the Town Attorney to follow the Board of Education's directions on this particular issue.

Mr. Killen informed Mr. Ferrara that the Council had no authority to tell Atty. Mantzaris what to do. The Town Attorney's duties are outlined under the Charter and State Statutes.

Mr. Ferrara asked who the Administrative Body of the Town was to authorize Atty. Mantzaris to pay the bill?

Mr. Killen answered, the Mayor is.

Mr. Ferrara asked if the Council was over the Mayor?

Mr. Killen, no.

Mr. Ferrara expressed his disbelief in what was happening here, as a private citizen and as a town employee. He could not believe that there was no one in the entire town that had the authority to tell an employee to mail out the check, that, by State Statute, the Board of Education has authorized payment with.

Mayor Dickinson stated that he, himself, had that authority but agreed with the town attorney, in his mind, this was a claim, and under the Town Charter, it requires the Town Council to authorize the payment of a claim.

Mr. Ferrara asked how this could be considered a claim if an invoice was never received?

Atty. Mantzaris retorted, how do we owe any money if we never received an invoice?

Mayor Dickinson stated that the town would like to have many questions answered and documents in our possession prior to payment. This process has accelerated, however, because the equipment is in need of repair.

Atty. Mantzaris responded, that with the history of this computer purchase, the Council had an investigating committee that ran for approximately 6 or 9 months that came out with findings numbering 39+, most of which found violations of the Charter regarding the purchasing of this system, etc., a complaint was made to the Board of Ethics that is pending court action, there was a stoppage put on it, Datacom sued the town over the bid process concerning the purchase, Chief State's Attorney's Office made an investigation of the purchase, there was an arrest made, a trial had, and a conviction. Now, this is not a simple, little bill, this has been presented to the Town of Wallingford for payment. You (the Council) seem to argue against my claim that it is a matter before you under the Charter. Add to that background that Hewlett-Packard is making an attempt to obtain monies in addition to the equipment. There are several pieces of paper that show different amounts as being owed. The bid was \$140,000., Hewlett-Packard sent something in for \$137,000., a third figure of \$127,000 is floating around, and now this one, \$124,544.58. How many different figures? How can you not say this is a claim? I'm willing to accept a vote on Mr. Solinsky's motion, which does not authorize settlement of the claim, it states, if you owe the money, pay the bill.

Mr. Killen stated that he was not prepared to act on the motion since he was not sure whether or not the town did in fact owe the interest as well.

There was much debate between Mr. Killen, Mr. Solinsky and Atty. Mantzaris over Mr. Killen's statement with regards to the interest. Mr. Solinsky and Atty. Mantzaris pointed out that authorization to pay only the \$124,544.58 for merchandise received was being requested.

Mr. Killen argued that Atty. Mantzaris had nothing in his possession that validated this issue had become a claim, and no paperwork in his possession showing the four different amounts reported to be owed.

Mr. Nicoletti questioned if Hewlett-Packard had not confronted us for the \$10,000.00 in interest, would the bill had been paid?

Atty. Mantzaris answered, if Hewlett-Packard would accept \$124,544.58 in full, he would consider paying the bill.

Mr. Nicoletti pointed out that the \$124,544.58 was agreed upon between California and Mr. Nelson Kari. Mr. Kari spoke to them on several occasions that the town will not pay for anything that had not been received. He confirmed with them that the only prices that would be paid were the extended prices based upon the bid. The document from California that is in Atty. Mantzaris's possession so states that. California has added on the extra interest.

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Mr. Gouveia argued that Adam, himself stated earlier this evening, that there may or may not be any additional claims, so therefore, pay the amount of \$124,544.58 which the Board of Education authorized. If any other claims arise, then we will deal with it.

Kathryn J. Wall, Town Clerk, stated that the initial step to filing a claim with the town is to file Notice of Intent to Sue with the Town Clerk's Office. No such notice has been filed.

Atty. Mantzaris answered, this is true with highway claims only.

Ms. Wall informed him that with any lawsuit, she is Agent to the Town.

Mr. Killen pointed out, that that was the point of the Council, exactly.

Atty. Mantzaris stated that he was not talking about a lawsuit, he is talking about a claim. A demand for payment is a claim.

Mr. Killen informed Atty. Mantzaris that if this were a lawsuit the Council would need to discuss this in an Executive Session to settle the claim. This is not being done this evening, due to the fact that this is not a claim.

Mr. Killen asked Atty. Mantzaris if there was anything in the contract stating that we would be liable for interest if the bill was not paid on time? If not, then the threats are ones of impending litigation.

Mayor Dickinson pointed out that the explanation regarding discussing this issue in Executive Session is under the F.O.I. language to give direction to the Council regarding pending claim litigation. Any piece of paper received by an attorney that is requesting payment from his client is a claim.

Mr. Killen answered, again, there is no proof that they will seek the additional monies for interest until we have received correspondence stating this once the \$124,544.58 has been received by the vendor.

Ms. Papale asked what harm would occur if the Council voted in favor of paying the \$124,544.58 this evening?

Mr. Gouveia answered that the Council would be setting a precedent in that every time a bill needed to be paid, that party would have to appear before us for the authorization to pay it.

Ms. Papale stated that she believed this not to be so. She went on to say that we are hurting the Board of Education employees who will not receive a paycheck.

Mr. Killen stated that, if no one receives a paycheck, then it will be up to those individuals to sue the town, and whoever is responsible for their not receiving their checks, he, himself will go after, the Charter allows this.

Mr. Bradley asked if we can get a bill from Hewlett-Packard?

Atty. Mantzaris asked for one in his letter dated May 7, 1990, and he has not received any response.

Mr. Bradley would like to get representatives from the company here to talk.

Mr. Zandri stated if he were the vendor, he would have confiscated the equipment by now.

Mr. Zandri made a motion to adjourn the meeting, seconded by Mr. Bradley.

VOTE: Holmes & Parisi were absent; Gouveia, Papale & Solinsky, no; all others, aye; motion failed.

Mrs. Duryea asked Atty. Mantzaris why would he ask the Council to authorize this amount if Hewlett-Packard would not accept it?

Atty. Mantzaris answered, because of the problem that the Board of Education is having with payroll, he wants payroll to be made next week.

Many of the same arguments over the different views on this issue were reiterated many times over. The Council requested once again, that Atty. Mantzaris pay the bill for merchandise received and if additional monies are requested, the Council will take that matter to task.

Atty. Mantzaris requested that a motion to that effect be made.

Mr. Gouveia felt that no motion was needed to carry out that action.

Mrs. Duryea made a motion to adjourn the meeting, seconded by Mr. Zandri.

VOTE: Holmes & Parisi were absent; Gouveia, Papale & Solinsky, no; all others, aye; motion failed.

Mr. Nicoletti stated that he was concerned with a possible job action with the teachers if payroll is not made.

Ms. Papale impressed upon Atty. Mantzaris that this falls in his lap since the Council does not appear to want to take any action on this matter.

Atty. Mantzaris called for Mr. Solinsky's motion to be made and voted on again.

Mr. Gouveia stated that Wallingford always takes action only after we have been put over the proverbial barrel. The town never acts it only reacts. He feels that had the problem not surfaced with the payroll, this issue would have remained unsolved for another year at least. The bill should have been paid the day after the Board of Education's vote was made.

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Mr. Solinsky made a motion that the Council does not recognize this as a claim and any amounts owed for merchandise received from Hewlett-Packard ought to be paid. Seconded by Ms. Papale.

Mr. Gouveia pointed out that the town attorney states this as a claim, and yet, on his recommendation, Mr. Solinsky, you make a motion that the Council does not recognize this as a claim. He failed to understand this.

Mr. Killen stated that if the vote carries that the Council does not recognize this as a claim, how can the own ttorney then see it as a claim?

Atty. Mantzaris stated that he would accept the vote and authorize payment and accept the consequences if he did anything wrong.

Mr. Killen argued that if Adam wanted to accept it in the form of a motion, then accept it as a statement of fact from the Council Members present and wanting to go home, that they do not recognize it as a claim.

Atty. Mantzaris wanted it on record. He went on to say that for the past year he has never gotten any direction from the Council to pay the bill, even with his many letters to the Council regarding the problems surrounding this issue.

Mr. Killen asked that Atty. Mantzaris write a statement to the effect that the Council can start ordering him, or any other department head to start doing things, put it on his desk, and Adam would have his vote now.

Mr. Solinsky clarified that, with his motion, he is stating that the Council does not recognize the \$124,544.58 as a claim.

VOTE: Holmes & Parisi were absent; Papale and Solinsky, aye; all others, no; motion failed.

Motion was made by Ms. Papale to adjourn the meeting, seconded by Mrs. Duryea.

VOTE: Holmes & Parisi were absent; Gouveia & Solinsky, no; all others, aye; motion duly carried.

There being no further business, the meeting adjourned at 11:22 p.m.

Meeting recorded and transcribed by:

Kathryn F. Milano
Town Council Secretary

Accepted by:

Albert E. Killen, Chairman

Date

Kathryn J. Wall, Town Clerk

Date

RECEIVED ON FILE JUN 5 1990
AT 3:43 P.M.
ATTEST *Kathryn Wall*
TOWN CLERK

MAY 31, 1990

CORRECTION

Page #13, Line 32

Mr. Killen stated that he would like a motion that the Town Council does not recognize this as a claim, therefore, no action is warranted by this Council (several Council Members began covering at once, therefore, it could not be determined who made the motion. A second was heard, but, again, this party went unidentified - it was incorrectly attributed to Mr. Bradley)

RECEIVED ON FILE: JUN 8 1990
AT _____ H _____ M _____ M
ATTEST: *Kathy [Signature]*
TOWN CLERK