

Paychex Contract Conversation April 20, 2021 Commission Meeting

Mayor Smith asked Clerk Thompson what concerns caused him to change this item from motion to approve to discussion. Clerk Thompson said it was Attorney Martin who had concerns. Attorney Martin said after reviewing statutes he believes the would be subject to Florida's Public Records Act and the city and the vendor are required to put certain provisions in the contract. He said it places responsibility on the vendor to maintain certain records as public records and provide them to the city. Attorney Martin said in this case Paychex said they could not agree to have that language in their contract so that is his concern with the document. His concern is that it would put the city commission sideways with the statute as it pertains to the provision of the Public Records Act. Attorney Martin said what Ms. Terry is providing to you is a list of government entities nationwide who use Paychex. He said six or seven are from Florida. Attorney Martin does not dispute that they do not have the language in their contract. He said what Paychex is doing is acting on behalf of a public agency in this case. Attorney Martin said in doing so they would be subject to the public records statute. The statute is 119-07-01. Mayor Smith asked if this has been challenged in court yet. Attorney Martin said this particular contract has not nor has the issue as far as he can tell of payroll records and payroll services. Mayor Smith said if our records are up to date on our side, what changes from point a to point b? Why can't they get the public records from us instead of going to them? Attorney Martin said he thinks the issue would be if the person looking would be looking to see if there is a change and they would not be able to see a change in data that is sent from here, received there and then processed that generates a payment back to the employee. He said in addition there are certain records that would be generated that affect pension plans in particular that the city's records would be dependent on the data generate by Paychex that needs to be retained for 50 years. He said Paychex will not put in writing that they will make sure to provide those records to us. Attorney Martin said the issue is this. They are a bid company and they are not willing to say today that their processes as technology changes that their processes tomorrow as technology changes will be able to accommodate the requirements of the Public Record Act among other things. There are also requirements under that act that certain records be destroyed on their side within a certain period of time. He said they are not willing to say they will abide by the statute and destroy certain records when they are required to destroy records within a certain period. He said he does not think it is because they think the statute is crazy but they have a template in place by which they do business and the template is not designed to meet the requirements of Florida's Public Records Act. Commissioner Chastain asked if the CPA company has looked at this agreement. Clerk Thompson said they have looked at it but he has not asked them to approve it. He said they provide the service but he does not want to go that route. Clerk Thompson said public records falls on us so we have to provide them and keep them for fifty years. Commissioner Chastain said if we are going to use this company he would like our CPA to review it. He asked Attorney Martin if there is a notice of termination if they wanted to. Attorney Martin said there is a thirty day termination clause. Clerk Thompson said they will do a data dump when requested. Commissioner Mortimer asked if we called any of the people on the list they do business with. Clerk Thompson said we just got the list yesterday but they can. Commissioner Mortimer said they have eight entities in Florida they do business with. She asked Attorney Martin how they managed to do that without this being discovered. Attorney Martin said the issue is not whether Paychex does a good job doing payroll. He said the problem is the provision of the Public Records Act and that requires the contract to have certain specified language in it. It requires them to take action and put in writing that they will do it.