39th KZGN News Talking Points Editorial

Should the city fund private industry, only to get sued by one of those companies?

But first, did you folks watch state’s attorney Marilyn Mosby, the city’s chief prosecutor, speech about the charges she and her office were bringing on 6 officers of the Baltimore police department? Did this sound like a neutral dissertation of the evidence and the charges? Not to me. However, there was one particular section that really hit me. I have to paraphrase because she said it so fast, and I was taken aback by it. When she was talking about how there would be justice for Freddie Gray, she said this, “To the young people of Baltimore, you have wanted justice for a long time, and now you’re going to get it.” Wow. So, just what is her job? Is it to enforce and prosecute the law without prejudice or to enforce it to make a certain segment of the community get justice? I’m not saying they shouldn’t be charged, but to announce the charges in the tone that she did is offensive and reeks of bias. It seems a number of other news agencies picked up on the same thing about that statement, justice for the young people.

Before I start today’s editorial, here are comments received on the KZGN discussion group about my last editorial: “Do you fear the direction our country is heading, or do you believe we are going the right direction, and why?” Harry said, “You nailed it, Tom. I do fear the direction our country is heading in. America is being taken apart.” Thanks, Harry. I appreciate your comment.

Now, on to today’s editorial: “Should the city fund private industry, only to get sued by one of those companies?”

On this week’s city council agenda is an item of hidden interest. It is mundanely listed on the agenda as follows: Conference with legal counsel – liability claim of Pertexa healthcare technologies, Inc. – claim no. 15-02. Well, if you’re a regular watcher of city council business, you see that every meeting the council is holding a closed executive session to discuss someone suing the city for something. But this one is of particular interest, and I want to offer the disclaimer now that we don’t have all the details yet about the claim. What they have submitted is a demand letter for payment of funds. This is not a lawsuit yet, but with city government, they have to submit a demand letter before actually filing a law suit. Yesterday, KZGN TV broke this story and has received sufficient information that we can put out the following information. If you remember about a year ago, the then city council, which I have to remind everyone that only 2 of the current council were on the council when this happened, the then city council awarded 4 companies millions of dollars from tab funds for economic development. This was grant money to help business start up in the city, provide jobs, and help diversify our economy. Sounds good in concept. But many people reminded the council then about the problems the city got into financially and legally with previous companies. In past years the city has tried to help finance economic development, only to have the projects go away and wind up in expensive legal costs.

But the council decided they wanted to ignore past expensive mistakes and said we must try and help new companies diversify our economy. They felt our legal agreements with these companies would be great for the city.

One of those companies, Pertexa was awarded about $800,000 for them to start up. For the record, they have not received all of the $800K yet. The agenda item has Pertexa with a claim against the city for more than $217,000. Why would a company that was given hundreds of thousands of dollars of our tax dollars, now be suing the city, and by default, us? In an April 22, 2015 letter from Pertexa to the city, they say why. This letter shall serve as notice of the detrimental impact to Pertexa caused by the city’s intentional, unwarranted and material delay in releasing payment of economic development funds as required under the economic development agreement dated August 9, 2014 with Pertexa. The impact to Pertexa and its rapidly moving business efforts and performance under the agreement are both short and long term.

The damages requested fall into 2 categories:

1.  Direct financial losses such as cancelation of our participation as an exhibitor at the American College of Cardiology.

2.  Delay of our overall program timeline along with the associated additional costs and lousy resources and opportunity.

The estimates of those losses are:

1.  $4120 for direct losses

2.  $213,000 for programmatic delay

Damages totaling over $217,000. Their letter goes on to say, “Pertexa has chosen at this time not to include all the damages it suffered as a result of the city’s wrongful actions, including loss of time to market, lost market shares, and the like.” This is a threat of a future suit. And finally the letter states, “If Pertexa does not receive the requested payment of $217,000 within 21 days of the date of the letter or come to some alternate solution agreeable to Pertexa, Pertexa will withdraw this offer and proceed with the actions necessary to protect the financial interests of their shareholders.” Did you catch the tone of that? It’s to be Pertexa’s way or nothing. The deadline is dictated as 5:00pm on May 13, 2015.

Additionally in the paperwork KZGN TV has obtained, a letter of demand of payment of $275,000 was sent to the city on March 9, 2015. The next letter from Pertexa dated March 17, 2015, admits receipt of the $275,000 on March 11, 2015. Now the last letter cited in this story was dated April 22, 2015, asking for the $217,000 in damages. As a side issue, this is also the company that Councilwoman Lori Acton works for as an employee of a subcontractor for Pertexa. However, there are Facebook comments that she may have been laid off in February, but we have not been able to confirm that. I would hope that even if she is laid off, if there was any potential that she may be recalled back to work for them, and then I would expect that she will have to remove herself from the closed session in the backroom during this discussion. As I read the agreement, I believe the agreement was for the city to provide funding for business operations, not that the city would become a business partner.

While we don’t have all the details yet, it sounds like Pertexa is blaming the city for bad business decisions. Not only do they get access to about $800,000, they are suing for another $217,000, and threatening of suing for even more. We’ll watch to see how this develops. We’ll hold judgment until the facts are completely known.

Now let’s discuss the 2 charges:

1. Direct financial losses such as cancelation of our participation as an exhibitor at the American College of Cardiology.

On this one, my research showed there was a convention in San Diego in March of this year.

If they needed city funds to go to San Diego for a convention, and couldn’t afford to go without city funds, then they are in serious trouble. If I was an owner/investor in Pertexa, a company whose main focus is this industry, I would have gone their if I had to walk and sneak in. I know that’s a little ridiculous, but the point is San Diego is so close, and shouldn’t have been missed for any reason. Surely to blame the city seems outlandish.

Next claim:

1. Delay of our overall program timeline along with the associated additional costs and lost resources and opportunity.

For this one, they would have to show full records to the city of how any nonpayment caused this damage. The city, otherwise known as we the taxpayer, needs to have proof of this charge. And since this affects our tax dollars, we should be privy to these claims, and the basis of them. This should not be hidden behind closed doors. Transparency goes further in this case. We deserve to know the basis for any tax dollars spent. When the council was considering the funding last year, there were questions from the public regarding financial condition of these companies and that the people had a right to know their finances.

One council person tried to argue that their financial data was private and not subject to disclosure to the people. I got up and argued that since this was we the taxpayer granting the money, we had a right to know everything the council knows in making their decision.

If the companies wanted to keep their finances secret, then don’t ask for public funds. The attorney in charge of the agreements got up and agreed with me. Anything involved in the decision process is public information, anyway, having a company that is getting over $800,000 from us, to turn and then sue us for damages, is unbelievable. While we don’t have all the details yet, on the surface this is ridiculous. The charges they have leveled seem to me to be bad business decisions. The city did not sign on as a business partner. They granted money. Did Pertexa confer with the city when they decided not to go to the trade show in San Diego? I don’t know the answer, but I bet not. The city should not be liable for Pertexa’s business decisions. If the SBA loaned the company money, and then the business went belly up, do you think the business would successfully sue the SBA? I don’t think so. It would be more like the SBA suing the company for their money back.

In conclusion, we don’t have all the facts yet. But with what is known, this stinks. Here we are again, trying to help diversify our economy by granting tax payer money, only to get sued within months of signing the agreement.

I’m Tom Wiknich, and that’s what I think. I’d like to know what you think. If you have any comments about this editorial, or would like to discuss or recommend a topic, I’d like to hear from you. Please email them to info@kzgn.net.