

PRE COUNCIL
FIRE TRUCK INVESTIGATION
October 30, 2006, 4:30 p.m.

Council Chair Patte Newman announced that the open meeting law was posted by the door. Chief Casady briefed the Council on the fire truck investigation conducted by the Police Department's Technical Investigations Unit. A criminal investigation was initiated on July 10th to determine if there was any crime involved with the acquisition of the fire trucks by Lincoln Fire & Rescue Department. Chief Casady introduced Investigator Steve Niemeyer who was the Police Department's lead investigator on the case; the FBI's investigator was Special Agent Jerry Bell.

The investigators examined the evidence for potential law violations, specifically bribery, official misconduct, obstructing government operations, theft by deception. After completing 67 investigative reports, conducting more than two dozen interviews, taking 16 statements from people with significant information, doing a forensic examination of three personal computers, reviewing 54 documents, records of 374 cellular telephone calls and thousands of emails including 159 emails that appeared to be relevant to the investigation, found was significant evidence of ongoing contact that occurred during the bid process between one of the bidders and former Fire Chief Spadt. Also found was evidence that Spadt advocated on behalf of EDM and also provided inaccurate reports to the Mayor concerning the compliance of the fire trucks with the city specifications. The evidence also showed that the President of EDM Equipment Jeffrey Mellen enlisted the assistance of Spadt to intervene on his behalf in various aspects of the acquisition process. None of these actions however were found to violate any of the city ordinances or state statutes. The investigation concluded that a significant contract dispute exists between the City and EDM Equipment concerning the contract for the fire trucks, but the investigators have concluded that this is a civil matter and there is no evidence of criminal conduct. The basic investigation has been concluded, but if new information is developed, the investigation will continue. Chief Casady then responded to questions from Council Members.

Jon Camp asked if the investigation was focused on Chief Spadt, or was it also on the President of EDM? Chief Casady said the investigation was on everyone involved in the process, and that would include employees at EDM or E One, Lincoln Fire & Rescue or anywhere else. Found was poor project planning, poor ethics, poor execution of a project plan and poor judgment, but none are a crime.

Dan Marvin asked Chief Casady to define official misconduct, which is one of the areas investigated. Chief Casady cited state statute 28-924 which states a public official commits official misconduct if he knowingly violates any statute or lawfully adopted rule or regulation relating to his official duties.

Jon Camp asked if the conclusion that there was no evidence of criminal conduct included all the individuals involved? Chief Casady responded that no evidence was found that the conduct of anyone involved met the elements of any of the crimes looked

at. Chief Casady made it clear that he was not saying there were not any highly inappropriate activities that occurred, but there was nothing that met the elements of a criminal offense.

Ken Svoboda asked what indication was found as to why Asst. Chief Huff was placed on Administrative leave? Chief Casady said that was not a focus of the Police Department's investigation. Asst. Chief Huff is one of the top managers of the Fire Department, he was involved in the purchasing of the fire trucks, he was involved in the final inspection of the trucks and he signed the factory build sheets. But no criminal activity was found on the part of Asst. Chief Huff.

Jon Camp asked if the Police Department looked at how the fire trucks were accepted? Chief Casady said in the course of conducting the criminal investigation, it was determined there were some significant problems with the purchasing process. The City wrote the specifications, provided those to EDM, however EDM apparently did not provide those specifications to E One, and instead provided factory build sheets which caused confusion between the City specifications and the factory build sheets which were provided to E One. An anonymous faxed letter was received by Vince Mejers and forwarded to the Mayor on January 31, 2006 informing him that the fire trucks did not meet specifications. After receipt of that letter, discussions were had with Chief Spadt and he assured the Mayor's Assistants that the trucks met specifications and that Dennis Klein was one hundred percent satisfied with the apparatus.

Dan Marvin asked if any evidence was found to defraud in confusing the specs when they were placed on the factory build sheets. Chief Casady said there is no way to know what was in people's minds and hearts as they went through this process. The City was not aware that the specifications were being transcribed onto factory build sheets, and by the time it was clear that what was specified wasn't exactly what was ordered from the factory, the trucks were already built.

Annette McRoy asked if any financial irregularities were checked between the people involved in the investigation? Chief Casady said that in these type investigations, looked for is if any money or thing of value changed hands, if there were any gifts or special favors that would have a monetary value. None were found.

Robin Eschliman asked if in the process of investigating for bribery, theft by deception, or special favors, did the Police Department investigate checking accounts of both Chief Spadt and EDM? Chief Casady responded that Chief Spadt was not interviewed during the investigation because he declined to be interviewed. You cannot obtain someone's financial records without a search warrant that establishes probable cause. There was not sufficient evidence to obtain a search warrant to search personal checking accounts. Investigator Niemeyer, however, indicated that the FBI took appropriate steps in this regard.

Jonathan Cook said cell phone records were checked and he asked about looking at office phone records? Chief Casady said that is not something that is kept. Jonathan asked if

there is anything that indicates that Chief Spadt knew at some point that things did not meet specifications and was telling the Mayor or the Mayor's staff something different than that, and when was it clear that things were not meeting specifications and that Spadt knew that? Chief Casady said that a January 5th email that Chief Spadt sent to Don Herz trying to forestall an inspect of vehicles by Vince Mejer led to the appearance that Spadt knew the trucks weren't quite right.

Annette McRoy asked Chief Casady in his opinion if there were any other City employees who exhibited a lack of judgment throughout this investigation besides Chief Spadt. Chief Casady said he did form some personal opinions where people were having discussions, weren't being straight forward and honest. This included people in the Maintenance Division and people in Management.

Ken Svoboda asked Chief Casady to expand on not interviewing Chief Spadt. Chief Casady said you cannot force someone to testify in a criminal investigation. Everyone has a privilege against self incrimination, and everyone has the right to remain silent, which is guaranteed by the 5th Amendment of the Constitution.

Jon Camp said that the City advanced \$1.7 million to EDM and asked when those funds went to E One? Chief Casady said there is documentation of when payments were made to EDM, but the financial transactions between EDM and E One were not investigated.

Robin Eschliman asked what prompted the Police Department to investigate Chief Spadt for bribery and theft and ask for an interview, and was the same requested of Huff; and if there is no probable cause in a criminal case, are things different in a civil matter? Chief Casady said it is considerably different in a civil matter because in a contract dispute, the burden of evidence is preponderance of evidence and clearly there is a contract between the City and EDM and clearly there is a disagreement between the two on whether the contract was violated. So there is grounds for civil litigation. But with a crime, the behavior has to be matched to the exact elements of an existing criminal statute. There are a lot of bad things that people do that are not crimes because they do not meet the elements of a crime. Asst. Chief Huff was interviewed. The only person the Police Department wanted to interview but declined was Chief Spadt.

Jonathan Cook said it appears there was an effort to mislead the Mayor and staff, and it goes from an attempt to construct fire trucks that do not meet specs to an attempt to cover up the fact that they had been constructed in a way that did not meet specs. He asked if there was information that would show that there was an attempt on the part of anyone to build the fire trucks to something other than the specs. Chief Casady said in the first bid process, there was communication between Mellen and Spadt where Spadt waived specifications. In the second bid process, Mellen submitted a bid that was basically for the same equipment he submitted on the first bid. There is good indication in the emails and documents that there was an attempt by Mike Spadt and to some extent by John Huff to keep this from getting out into the public. Cook asked if the Police Department's report will be making recommendations regarding how procedures should be changed so this doesn't happen again? Chief Casady indicated that Investigator Niemeyer completed

an extensive executive summary, and the Chief concurs with Niemeyer's concern that... "Lincoln Municipal Code chapter 2.18 relates to the purchasing division procurement. The code does not address some of the various issues that came up in regards to the fire truck purchase. To prevent a similar problem in the future, city government should set in place additional rules and regulations with regard to how purchasing of major equipment will happen. Then if there is a deviation from these procedures or rules, there may be a violation of the law under official misconduct statute." A prime example is the great deal of communication that took place between a department head and a vendor during the bid process which ought to be prohibited and adopted as a rule and regulation.

Patte Newman asked what the next step is? Chief Casady first stated that the Police Department does not close cases and if information comes forth, additional investigative work will be done if facts and circumstances warrant it. The investigation was to determine if crimes were committed in the acquisition of fire trucks. There is a personnel investigation being conducted by the Personnel Director to determine if any City employees acted inappropriately enough to be subjected to disciplinary action. The Chief is hopeful that the Purchasing Department, Mayor's Office and City Council will consider adopting some rules and regulations that can be enforced for these kinds of major purchases.

Ken Svoboda asked if the Chief was willing to share with the Council copies of the executive report? Chief Casady said he would be happy to sit down with any Council Members one on one in his office and they can read the report, but if he gives that report to the City Council, it becomes part of a public record and the Nebraska Criminal History Information Act specifically excludes investigative reports from public records. Svoboda also asked Chief Casady if he had been directed to turn over evidence to the City Attorney's office for any civil action? Chief Casady responded that no one has directed him to do that, but a CD linking the pertinent parts of the executive summary to the relevant documents has been provided to the City Attorney and the Personnel Director so that they have the documents they need to help in the course of the civil litigation or personnel investigations.

Adjourned at 5:25 p.m.