

Former Gallup police chief turns in audio recordings

Written by By Cody Begaye Sun Correspondent
Friday, 05 April 2019 12:58



Examining a case against the city

Former Gallup Police Chief Phillip Hart recently turned his phone over to the City of Gallup during the latest developments in his case against the city.

According to City Attorney Curtis Hayes, Hart allegedly recorded conversations he had with City Manager Maryann Ustick without her consent. Baker Law Group, which is handling the case for the city, asked him to submit those conversations to the court.

Hart turned in the recordings March 19. But Hayes says McKinley County-Gallup District Court has been unable to access most of them.

“As I understand, some [recordings] were provided a few weeks ago, but the files of many of the recordings could not be opened and played,” Hayes said March 21.

When asked if case information could be provided, Hayes said that since the case is being handled by an outside firm, his knowledge of the case is limited.

In addition, Mayor Jackie McKinney said March 22 that since this case is ongoing, he is not at

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liberty to discuss any of the details.

THE START OF THE CASE

The March 19 hearing was the latest development in an ongoing case between Hart and the City of Gallup, one that stretches back to mid-2017.

According to court documents, Hart filed a complaint for declaratory judgment about June 12, 2017. The complaint stated that Hart raised an issue with the City of Gallup regarding the city allowing Community Service Aid Officers to pick up and transport intoxicated individuals for protective custody at Na’Nizhoozhi Center Inc.

Hart had met numerous times with the city manager and city attorney before requesting a written directive from the city regarding the practice of transporting intoxicated people to detox. The city provided an email to Hart to continue the practice that was established decades ago.

The email was written by former City Attorney George Kozeliski, who said that city officials believe that the city’s liability in not following present procedures may be greater than the present procedures that came from dealing with the problem of intoxicated individuals.

“We do know other communities have different policies, but we believe ours is the best for the situation we have faced for decades,” Kozeliski’s email reads.

Kozeliski concluded the email by telling Hart to continue the practice the city has used in the past, adding that the city feels it is best from both a humanitarian and legal point of view.

OUTSIDE LEGAL COUNSEL

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Some time after telling city officials that they were violating state law by allowing uncertified CSAs to sign intoxicated people into NCI, Hart was placed on administrative leave by the city, preventing him from fulfilling his duties as police chief.

Hart alleged that this move was a violation of the Whistleblower Protection Act, which protects individuals who report a wrongdoing.

Hart sought his own independent legal opinion outside the scope of his employment.

On June 9, 2017, the City of Gallup received an email from Hart's counsel, Johanna Cox.

"The CSA officers are civilians and not certified or commissioned police officers," Cox's email reads. "[Hart] has stated that the detention, transport, and commitment of citizens by CSA agents is unlawful."

Cox said that CSA agents are civilians and thus have no authority to fulfill these actions, and that the Detoxification Reform Act specifically only authorizes police officers to take such actions. Yet, despite knowing the legal ramifications of the act, the city allows this practice to continue.

According to Cox, Hart was told that if he did not fulfill the obligations of the Act, he would be violating city policy, despite the legal issues presented.

The resolution requested by Cox amounted to \$1.13 million, as well as an indemnity agreement between Hart and the city. Hart would also immediately resign as police chief.

If the city was not willing to resolve the matter and accept the demand, Cox would file suit, which was the start of the ongoing case.

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Court documents state that a justifiable controversy exists between the City of Gallup and Hart based on two factors.

The City of Gallup believes it is adhering to the Detoxification Reform Act through its protective custody practices.

Hart and his attorney, believe the established custody practices are unlawful.

The outcome of the case would either terminate the controversy, or remove any uncertainty, according to court documents.

TENSIONS RISE

The first hearing for the case was on Sept. 1, 2017 at the district court. This led into a non-jury trial on Jan. 9, 2018 and then a merits hearing on Feb. 28, 2018.

During the Feb. 28 hearing, District Court Judge Robert Aragon ruled in favor of the City of Gallup, rejecting Hart's interpretations of state laws concerning transporting intoxicated individuals to detox.

As previously reported by the *Sun*, the city argued that CSAs do have the proper authority to sign intoxicated persons into a detox center like NCI because they are considered peace officers.

The *Sun* also reported March 2, 2018 that Hart had assigned a certified police officer to be available to sign people into NCI, and that the issue at the center of the case was moot.

However, Hart was not going to take the ruling as a defeat. He filed an appeal March 26, 2018,

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and a scheduling conference was set for April 25, 2018.

The motion hearing would not be held until Jan. 22, 2019. In the months between court hearings, tensions between Hart and the city reached their peak.

In June 2018, Hart was not present at his job one week, leading to reports circulating that he had been suspended or fired, which the *Sun* also reported on.

To make the issue more complicated, neither Capt. Marinda Spencer, nor city officials were answering questions about his status, or if he would return as police chief.

The City of Gallup severed ties with Hart, July 25, 2018, filing a notice of deposition to the courts Aug. 31.

In the months after the deposition, the recorded conversations between Hart and the city manager came to light. The city filed a motion to compel the production of the recordings on Dec. 5, which was seconded on Dec. 19.

WHERE THE CASE IS NOW

Hart turned his phone over to Computer Services of Albuquerque, which provides information technology work for the city, and 43 audio files were retrieved.

But most of the files could not be accessed at the March 19 hearing. This has led to a trial that was scheduled for April 2 being pushed to November after a continuance by Aragon.

The deposition the city had scheduled with Hart last fall was cancelled as a result of the delay.

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Hart opposed setting another date for the trial, as stated by his counsel in a response that was filed March 19. The response by Cox said that there has been ample time for the city to prepare its discoveries, and that its failure to seek relief prior to the trial should not be detrimental to Hart.

“He has conducted discovery and is prepared to move forward in April as scheduled,” the response reads. “He has been unable to exercise his appellate rights with this pending, and will be prejudiced by further postponement based on the City’s inability to prepare.”

The trial has been reset for Nov. 4, with deadlines also being rescheduled and the discovery period reopened by Aragon.

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