

**New Carlisle Town Council acting as the Board of Public Safety  
124 E. Michigan Street, New Carlisle, Indiana  
Hearing, January 9, 2019 5:00 PM**

The hearing was opened with the Pledge of Allegiance.

President Carter called the Hearing of the New Carlisle Town Council meeting as the Board of Public Safety to order with Council Member Vermillion, Council Member Budreau, Council Member Kauffman, Council Member Rush and Clerk-Treasurer Susan Moffitt present.

Also in attendance were Andrea Halpin, Dan Pfeifer, Clint Zalas, Ron Whitt, Tonya McKee, Jill Doll, John Gelow, Dave Doll, Sandy Colpitts, Cal Dittmar, Josh Szuba, John Mrozinski, Howard Dukes and Ron Colpitts.

President Carter turned the meeting over to Attorney Andrea Halpin for any comments.

Attorney Halpin: I don't have any comments as there was raised an issue out in the hall before the meeting and Sgt. Whitt's counsel feels that I have a conflict of interest because of my position advising the Council and advising the Chief and am not prepared to respond at this time. I feel that I have advised only procedurally but do not want to put anything or any decision that is made either way in a position of being appealable.

President Carter: Where do we go from here?

Attorney Halpin: I think it is fair to say that the procedure, I can talk about without advising, is that the Chief is going to present his charge and his recommendation and then the Council decides. What I discussed with Sgt. Whitt's counsel is that he has the five days to request a hearing and he would request that hearing and we would find a date. That is my understanding of what is going to happen.

President Carter: Chief

Chief Dittmar: At this time I recommend termination of Sgt. Whitt, the department's IDACS Coordinator, for his continued undocumented queries on IDACS which constitutes Conduct Injurious to the Public Welfare per Indiana Code 36-8-3-4.

IDACS is the Indiana Data and Communication System. It is a computerized information and retrieval system that contains confidential information. The Constitution provides rights to the citizens that cannot be violated unless circumstances exist that probable cause is there and laws were broken. These rights limit police's authority to access a person's confidentiality because citizens deserve privacy. Because of this Constitutional right it is of the utmost importance that the police do not violate these rights. When officers query IDACS they need to have particular reason for it and it's got to have supporting documentation. For instance traffic stops, investigations, suspicious person, suspicious vehicle. A vehicle parked at a bank weird in a parking spot at 2 in the afternoon would be suspicious to me. Came in in a hurry, parked weird, don't know if he's going in to rob a bank or what's going on here. But its suspicious activity and you could run that plate at that time but we'd better be documenting it and having a calls for service or some kind of log why we

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ran that plate at that time. Officers cannot query IDACS for a civilian or disseminate the information to civilians or for them and for personal reasons they cannot query.

Police departments need an assistant coordinator. The assistant coordinators work under a coordinator. Coordinator can be from another department as long as they agree to it. So for instance, they might be an assistant for our department here and Jordon is the coordinator for LaPorte City. If he agrees to be the coordinator for our department he can work for us under her or she can work under his power then. They have no problems with that. A coordinator and assistant coordinator's responsibilities include but are not limited to ensuring department users are not violating policies and rules of IDACS and handle audits to verify IDACS audits when requested by IDACS personnel. Several times at some point IDACS will audit a department and they will pull up cases or whatever it is I'm not sure what they do yet since I've been in the position I haven't been audited yet. But they pull up whatever and we have to verify why. Assistant coordinators and coordinators to become certified pass IDACS testing and after certification testing coordinators and assistants are familiar with rules and regulations of IDACS policies and procedures as well as consequences of violation. For instance some violations can result in fines up to \$28,000 dollars to the individual officer as well as fines and penalties to the department of the violating officer. If a violation occurs and the department knows but fails to report the incident to IDACS the department could face fines, penalties and/or be decertified from IDACS use. These fines and penalties do not include civil liabilities.

When I was appointed chief in May the department had an assistant coordinator at the time. At the time I was unable to find a coordinator that he could work under so I asked Sgt. Whitt if he would take the responsibility. On June 29 of 2018 Sgt. Whitt passed his full coordinator certification becoming the department coordinator for IDACS. A short time later it was brought to my attention by an outside agency that there may have been an IDACS violation involving Sgt. Whitt. Uh I contacted IDACS on August 30 and requested query documentation from June through August of 2018 for all of Sgt. Whitt's queries in that time frame. What was discovered is in that time frame he worked 41 shifts. A shift is normally ten hours. He queried 794 times in that time frame. Total queries that were not documented was 455 in that time frame. When you run somebody query through IDACS you do it by driver's license number, a license plate, name and date of birth is normally how it goes through there. The average queries per shift came out to 19.4 so a ten hour shift he queried approximately nineteen times a shift. The average queries per shift that were undocumented was eleven so basically one an hour. Thirty of these queries were done by name and date of birth and not associated with the other 425. What that means is to run somebody by name and date of birth obviously you are going to have to have their name and you're going to have to have their date of birth. The way you get a date of birth is either you know it which most people don't know dates of births of people or if you query into IDACS and run driver's license you'll get it. If you're on a traffic stop or something of that nature and you have their driver's license you're going to have a date of birth there to query but again you're on a traffic stop and you should have documentation at that point.

The unverified by documentations should be a calls for service for a stop or a reason he was there. The way it'd be a calls for service which is our dispatch log when we call in to dispatch and they log

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us on a call and that's what a calls for service is. Uh another way is for incident reports, an arrest report we have an arrest we take a report and that would be another one, theft report it would show up in there too. Sgt. Whitt's failure of documentation on why he did and verification that he did do it is a violation of the IDACS rule. When the violations were discovered the information was forwarded to Indiana State Police for review. Also at that time because I discovered violations formal notification was sent to IDACS.

That's all I have at this time that's why I'm recommending. Any questions?

Council Member Vermillion: I have one. When you contacted IDACS did they indicate whether that was an unusual amount of inquiries?

Chief Dittmar: They did not say one way or another.

Council Member Vermillion: Okay

Chief Dittmar: But they did advise me that the violation was there because I had asked some questions.

Council Member Vermillion: Okay so IDACS specifically said there was a violation?

Chief Dittmar: Right so IDACS, right.

President Carter: Is there any way to state what the normal is. I know that is not the right question. What would, is there a national average or a county average or local or State of Indiana average for the number of queries to IDACS on a daily basis?

Chief Dittmar: I'm unsure about that.

President Carter: Okay

Council Member Budreau: The other officers, have they been audited for IDACS violations?

Chief Dittmar: No they have not. When an audit comes up like that there has to be a reason and it was brought to me by an outside agency because of a case.

Council Member Budreau: Would a reason to audit somebody be that I want to see what the (inaudible) of my entire (inaudible) looks like and maybe do an audit across the board to eliminate any risk that there may be? Would a reason be to audit every police officer under your command just to ensure there is no other risk out there?

Chief Dittmar: I don't see a reason why to do that. I have a lot of man hours wrapped up in just this one for three months and I couldn't see spending the manpower to do that all the way across the board. Most of the time like I said a violation has to occur before there was paperwork and things I had to do to be able get the records that I did from them.

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President Carter: So it's not customary for you or without a violation, its not customary to search for this type of thing?

Chief Dittmar: Correct.

Council Member Vermillion: If IDACS does do an audit do they audit the department or do they audit each individual on the department?

Chief Dittmar: I am unaware of that it could be both from what I heard. Like I said I have not been audited by IDACS yet since I've been in command here so I'm unaware of how that works. The way I understand it is they pull certain cases with guns, stolen equipment, whatever and then we have to prove why. So it could be an officer or the whole department as a whole.

Council Member Budreau: Did at any time Sgt. Whitt ever give confidential information to any civilians?

Chief Dittmar: I'm sorry?

Council Member Budreau: Did Sgt. Whitt at any time offer or give, I call it slippage, any IDACS information that is confidential to any civilians?

Chief Dittmar: Not that I'm aware of.

President Carter: Any other questions?

Council Member Budreau: I do. Was he counseled when you became aware that there was an IDACS violation?

Council Member Vermillion: According to IDACS there was a violation.

Council Member Budreau: Was he counseled verbally or

Chief Dittmar: It was turned over to Indiana State Police.

Council Member Budreau: Was Sgt. Whitt made aware of that?

Chief Dittmar: He was not.

President Carter: Does anyone else have any questions?

There were no further questions.

President Carter: Thank you Chief. I guess at this point we proceed to

Attorney Clint Zalas: May I speak for a moment?

President Carter: Sure, go ahead.

Attorney Zalas: Clint Zalas on behalf of Mr. Whitt. Attorney Halpin alluded to some things that I think are important for the Safety Board to consider. First of all, a notice of hearing has already been issued and that was to take place this evening. As early as yesterday there was indication that there would be an amendment to charges. I want to step back from that a little bit and go back to our last meeting when we were here and we talked about producing documentation and records so the hearing could be held this evening at 6 PM in order to get to the bottom of this. Documents were still being produced as late as yesterday. The most important of those documents produced was the procedure the Safety Board is to follow in rendering their decision. Mr. Whitt is objecting to the amendment of these charges under the ordinances that are in effect that were produced yesterday. The amendment to those charges can only take place after this board votes and a majority of you conclude that an amendment is appropriate. I don't want to get beyond the procedure of this but it is important that the board make a determination that amendment is appropriate and I'm objecting to it because of what I just heard here before this safety board, that these things were known back in August. More importantly, they were known the last time we were here for the hearing. There was no indication as to why a fourth claim was not added at that point in time and why we have now waited. I haven't heard any good cause for an amendment of these charges. I will tell the board that I met yesterday with the Indiana State Police with Sgt. Whitt and all of the violations that you heard about from Chief Dittmar boiled down to one single incident of an alleged IDACS violation on August 11, 2018. The interview and investigation took approximately forty-five minutes and the two Indiana State Police Investigators gave indication that they will have their investigation concluded within the next two weeks and a recommendation once they conclude their investigation. With regard to the sum and substance of what we heard at the last meeting there were three violations that were essentially alleged. One was completion of internal reports. Daily log activity. The second was an unreported or undocumented accident with a vehicle and the third involved overtime violations for failure to get permission essentially to work overtime. I requested the records to support the daily log reports that were not completed. When the documents came to my office there is records that the daily log reports were completed just not in the format that was suggested to the safety board.

Attorney Halpin: Clint, for procedure purposes why are you giving evidence?

Attorney Zalas: I'm not giving, well for procedural purposes for getting evidence, yesterday we received the rules and the regulations. We learned for the first time that we have a right to answer these allegations. We were never advised of our rights. In the same way that the Chief gives the opportunity to grieve to you that a member of the police force should be removed, your local ordinance gives Sgt. Whitt the same right to formally answer those claims and charges and we have not been given those, so I am giving the board at least a flavor of a response as to where we are in all of this.

Attorney Halpin: The evidentiary hearing, isn't that when that would occur?

Attorney Zalas: That would occur at that point in time but I am essentially answering the general charge that's been levied and saying I'm objecting to any amendment at this point in time of any of

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these charges. This should have been done in late November and now we are beyond that and new charges are being added.

Attorney Halpin: You know why because I told you in an email what we were instructed by the investigators.

Attorney Zalas: If they had a grievance with regard to IDACS, regardless of what the Indiana State Police were doing, if they felt that there was an abuse of that system, they could have brought it to you at that point in time. It is not predicated upon the Indiana State Police conducting an investigation.

Attorney Halpin: What is the statute or ordinance that requires it be brought at that time?

Attorney Zalas: I don't know. These things were given to me yesterday with regard to amendment of the charges. I'm working on the fly here.

Attorney Halpin: I am not aware of any that requires we provide that.

Attorney Zalas: I'm not aware of it either. But thus far there has been nothing but allegations in this room against my client. There has never been an opportunity to respond. There are just more allegations.

President Carter: I believe that is the reason for establishing this evidentiary hearing in thirty days.

Attorney Zalas: That is why we were to be here this evening, yes.

President Carter: I agree.

Attorney Zalas: And now it sounds as if we're coming back at a later date for amended charges but I haven't heard that these charges are being allowed to be amended by the board. Your statute says

Attorney Halpin: It is an additional charge. It doesn't say amendment.

Attorney Zalas: at any time prior to the issuance of hearing the charges made or any part thereof may be amended as a matter of right to clarify the allegations, to correct errors, or to include additional allegations of misconduct after the member or other individual members with respect to the same fact pattern or transactions contained in the original or amended statement of the charges. After notice is issued, we've been notified and we are here for a hearing which was set for this evening, the Town Safety Board may, by consent of the majority, allow the charges to be amended.

Attorney Halpin: Clint you just argued that it was not raised so its not an amendment of an original charge, it is an additional charge. Are you denying we have an email between the three lawyers saying that we would agree that we would have this way I described tonight and that there would be a hearing set and agreed upon?

Mr. Zalas: Absolutely not. What I am telling you is I didn't have your rules of procedure when those communications were made as to what we are supposed to be doing and how we are supposed to be going about it. I now have them in my hand and I believe that the safety board needs to make a determination first of all that the charges should be amended. I am objecting to the amendment because I am not seeing a basis for it.

Attorney Halpin: Since you have effectively put me in a position where I can't advise the Council then I think that you need to let them obtain counsel and then hear that issue when they are represented.

Attorney Zalas: And that is fine. You may have, as I am reading your rules if these are the current versions of them, then you should have counsel. The rules of this procedure state that it is an adversarial proceeding. He should be represented by someone. I believe that counsel has represented thus far accepting correspondence in regards to the allegations, has also advised this board as well. This creates an impermissible conflict of interest. It may be innocent

Attorney Halpin: I am not admitting that I have advised the board in any of this. All we have discussed is procedure and it has all been in public. It has all been on the record so I am not going to agree to that or admit that. What I am saying is that you have raised an issue. In the interest of not having an appealable issue, I am not representing them right now and so they need to have a lawyer. You can't proceed against them without them having a lawyer.

Attorney Zalas: I'm not proceeding against anybody at this point in time. Sgt. Whitt is objecting to the amendment of the charges. The conflict issue is on the table for the safety board and yes we do need another hearing.

Attorney Halpin: And they need representation in order to answer that question.

Attorney Zalas: I agree with that.

Council Member Budreau: Mr. Zalas, excuse me, I am a simple guy, but you are objecting that we add this into the other three?

Attorney Zalas: Yes and that is for the safety board, as I read your local ordinance, to vote on. You can obviously overrule my objection and conclude through a majority that there should be an amendment to the charges but I think that is the proper procedure that needs to go on here and not just the charges are amended and that the safety board be advised that they could determine that the charges should not be amended according to the statute that I am reading.

Council Member Vermillion: I understand that we can take a vote on this and say yes we would like to have the amendment added to the original charges. However, at that same point I would ask our attorney whether or not that was a proper thing to do and obviously she cannot answer that question, so as far as I'm concerned, we can't answer that question tonight without advice from our attorney.

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President Carter: Right.

Council Member Budreau: Does anyone know why this wasn't added to the original charges?

Council Member Vermillion: They just got it I think. That was my understanding.

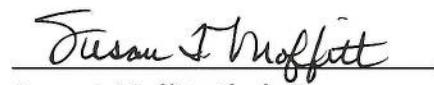
President Carter: It is my understanding, I'm not saying a word without counsel, I'm sorry. I guess we are going to adjourn this meeting and we will have to have our own representation and I assume we'll be in touch regarding a further meeting. Alright, we are adjourned.

The meeting was adjourned at 5:25 PM.



Ken Carter, Council President

Attest:



Susan I. Moffitt  
Susan I. Moffitt, Clerk-Treasurer