

File  
F-42  
Misc



# City of Pensacola

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*Office of  
City Attorney*

September 24, 2003

Mr. Charles Fairchild  
510 South Palafox Street  
Pensacola, FL 32501

Dear Mr. Fairchild:

This is in response to your letter dated September 12, 2003, concerning certain actions that transpired at the Thursday, September 11, meeting of the Pensacola City Council. At that meeting, Deputy Mayor J. D. Smith was presiding in the absence of Mayor John Fogg. At some point during the meeting, you were recognized by the Chair (Deputy Mayor Smith) to speak on an item of City business. While you were speaking, you physically removed the microphone from the device to which it was attached and attached another device to the handle attached to the microphone. The device you attached to the microphone apparently was a novelty store toy which had imitation "eyes" on it which were rather prominent. According to statements made by you, the device is supposed to be something to remind the Council that "we are watching you" referring to an organization to which you belong.

It is obvious that the intent of attaching this device is for members of the City Council to focus upon it rather than whatever is being said during the course of the meeting while this item is attached to the microphone. Deputy Mayor Smith felt that this action of yours was demeaning, distracting, and disruptive of the normal manner of conducting City business and requested that you remove same, which you did. This office totally agrees with the action of Deputy Mayor Smith in that the device is obviously intended to be a distraction or there would

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be no reason for placing it on the microphone. This action in turn tends to disrupt the orderly process of the meeting.

The questions contained in your letter seemed to indicate that you think the City Council needs to have specific authority for everything the City does. This is not the case. In 1968, the voters of the State of Florida adopted Article VIII, Section 2 of the Florida Constitution granting what is commonly known as "home rule powers" to Florida municipalities. Section 2(b) of Article VIII reads as follows:

(b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

This constitutional provision was further implemented in 1973 by the adoption of the "Municipal Home Rule Powers Act" by the Florida legislature. Section 166.021(1), Florida Statutes, reads as follows:

**166.021 Powers.-**

(1) As provided in s.2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

In addition to this general authority provided in the Florida Constitution and Florida Statutes, a portion of the rules and procedures of the City Council provides as follows: The Mayor shall preside at every meeting of the Council and shall have equal participation. . . . The Mayor shall preserve order and speak to points of order, in preference to other members of the Council, and shall decide all questions of order, subject to appeal to the Council by any member. . . . The Deputy Mayor shall exercise all duties of the Mayor during the Mayor's

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absence or disability, and shall assume the Chair at the request of the Mayor.

Of course there is no definition of what is considered to be a "disruptive comment or action" since it would be totally impossible to try to specify everything that may fall within this term. I might also note that there is no definition of "due process of law," "reasonable search," and "freedom of speech" as contained in the United States Constitution. Nor is there any definition of "disorderly conduct," "breach of peace," and a myriad of other general terms that govern conduct contained in the Florida Statutes which are all perfectly legal proper standards to use.

The City Council has always encouraged citizens to speak during the course of City Council meetings and you are encouraged to continue to do so. However, actions which appear to the Chairman to be distracting and disruptive will be dealt with in an appropriate fashion by the Chairman of the meeting.

Sincerely yours,



Don J. Caton  
City Attorney

DJC:je

cc: Mayor and City Council  
Thomas J. Bonfield, City Manager  
Shirley F. White, City Clerk