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May 23, 2012

Mayor Ashton J. Hayward  
222 West Main Street  
Pensacola, FL 32521

Re: Your Memorandum to City Council Dated May 15, 2012

Dear Mayor Hayward:

I have been retained by Sherri Myers with regards to an official memorandum sent by your office to the Pensacola City Council and City of Pensacola employees. As you are aware, Ms. Myers serves as a City Council member and has been directly impacted by the May 15, 2012, Contact with City Council Members memorandum.

I write on behalf of my client to request that you immediately and officially withdraw the May 15, 2012, memorandum. Your actions taken in the memorandum at issue are illegal and improper as you lack the power to prevent council members from communicating with city employees.

Furthermore, your actions taken in the memorandum are in violation of the explicit commands of the City of Pensacola Charter, are violative of the separation of powers doctrine, and interfere with the ability of council members to perform their duties in their official capacities as representatives of the citizens of Pensacola.

As a result of your memorandum basic communications between city employees and council members have been wholly obstructed. Ms. Myers has made several inquiries to city employees that have gone unanswered since the implementation of your new policy. Such a situation is untenable if the City of Pensacola government is to function efficiently and appropriately.

Further, you lack the authority to implement this policy, and as a result have derogated from your explicit duty under the Charter, Section 4.01.(a), to "exemplify good citizenship and exhibit a cooperative spirit." The power you have exercised, requiring that "all future communications and dealings between the individual City Council members and City employees be done through the Mayor," goes beyond the bounds of your limited duty to carry out the executive powers of the city (Section 4.01.(a)(1)).

The City Charter Section 4.04.(b) which you attempt to use to justify your sweeping new power to limit all communications between council members and city employees authorizes no such power. In fact, this section clearly and plainly states that City Council and Council Members are allowed to make inquiries and conduct investigations. The dictionary definition of "inquiry" defines the word as "a request for information." The only prohibition mentioned in that section is that Council Members and the City Council may not give orders to city employees. This section hardly contemplates that you have the power to direct all communications with city employees through you first.

It is truly sad for Pensacola that you would overstep your powers and engender a sense of hostility between the Mayor's office, the City Council, and the City of Pensacola employees. Such a climate is not beneficial for the citizens of the City of Pensacola and the proper functioning of their government, and most assuredly, is not in keeping in line with your primary duty to "exemplify good citizenship and exhibit a cooperative spirit."

The very foundation of our government at the local, state, and national levels is based on the essential principle of the separation of powers which prevents the accumulation of governmental power into a single branch of government. While the new Charter of the City of Pensacola did alter our form of local government, it did not grant your office the ability to simply do as it pleases. In fact, your office's powers, some of which have been mentioned above, are clearly laid out. Your May 15, 2012 memorandum has departed from the scope of those powers vested in your office and has departed from the essential spirit of the Charter itself.

One of this nation's most esteemed founding fathers, Thomas Paine, stated "[a] constitution defines and limits the powers of the government it creates. It therefore follows, as a natural and also a logical result, that the governmental exercise of any power not authorized by the constitution is an assumed power, and therefore illegal."

The constitution of the City of Pensacola is its Charter, which as established above, clearly does not vest within your office the power to obstruct all communications between members of City Council and City of Pensacola employees.

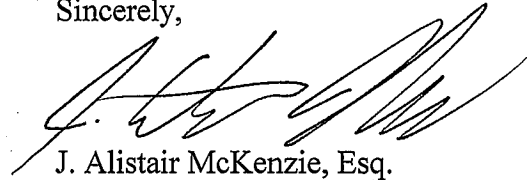
This letter serves as an attempt to clarify for your office the fact that the Pensacola City Charter does not grant your office the power you have sought fit to exercise and is an attempt to ameliorate the sense of hostility that has now arisen in the City of Pensacola's government as a result of that illegitimate exercise of power.

Thus, in the spirit of cooperation my client has requested that you publically and officially retract the May 15, 2012 Contact with City Council Members memorandum.

However, should you not publically and officially retract the memorandum within one week, my client will be forced to file a formal legal action in court against you.

Should you have any questions regarding the above, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Alistair McKenzie, Esq.', written in a cursive style.

J. Alistair McKenzie, Esq.

/jam  
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