IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

SHERRI F. MYERS,

Plaintiff,

vs.

Case No.: 2012 CA 001527
Division: "A"

ASHTON J. HAYWARD, in his official capacity as Mayor of the City of Pensacola, a Florida municipal corporation,

Defendant.

_______________________________/

ERNIE LEE MAGAHA
CLERK OF CIRCUIT COURT
ESCAMBIA COUNTY, FL
2012 SEP 28 A 9:10
CIRCUIT CIVIL DIVISION
FILED & RECORDED

## ORDER GRANTING COMPLAINT FOR WRIT OF QUO WARRANTO IN PART AND DENYING COMPLAINT FOR WRIT OF QUO WARRANTO IN PART

THIS CAUSE came to be heard by the Court[1] on September 24, 2012 on the Plaintiff's Complaint for Writ of Quo Warranto filed on June 20, 2012. The Plaintiff contends that the relief sought is for the Defendant to "demonstrate his authority to prohibit all of City Council's communications with employees of the City of Pensacola." The Plaintiff's contention is that Defendant "is not authorized to establish a policy which prevents communications between members of City Council and City

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[1] The Court would note that when there are disputed issues of fact, it has been held that a petitioner may seek a jury trial in quo warranto proceedings. See State ex rel. Clark v. Klingensmith, 170 So. 616 (Fla. 1936); c.f., § 80.031, Fla. Stat. However, the parties have agreed that the issues in this case, which are questions of law, could be resolved by this Court. If a quo warranto case does not present a disputed issue of fact, the Court may resolve the case on the basis of the pleadings and arguments alone. Philip J. Padovano, Civil Practice, Quo warranto, § 30:3 (2011 ed.).



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employees." The Court issued a Temporary Writ of Quo Warranto which was filed on August 8, 2012. The Court finds as follows:

Quo Warranto

"The term 'quo warranto' means 'by what authority,' and the writ is the proper means for inquiring into whether a particular individual has improperly exercised a power or right derived from the State." Whiley v. Scott, 79 So. 3d 702, 707 (Fla. 2011). Quo warranto is a discretionary remedy. State ex rel. Hawthorne v. Wiseheart, 28 So. 2d 589 (Fla. 1946). Indeed, it should be remembered that quo warranto is an extraordinary remedy. Case v. Smith, 465 So. 2d 1294 (Fla. 1st DCA 1985).

Quo warranto "is frequently used to contest the authority of a public officer to take certain actions in an official capacity." Philip J. Padovano, Civil Practice, Quo warranto, § 30:3 (2011 ed.). However, as Justice Lewis explained in his concurring opinion in Florida House of Representatives v. Crist, 999 So. 2d 601 (Fla. 2008):

> If a court reframes the proceeding as an action challenging the legal correctness of the action of a state officer or agency, rather than the power and authority of the officer or agency to act, the proper procedural device is arguably a declaratory judgment action, not a petition for writ of quo warranto.

(Emphasis added).

Accordingly, the Court will resolve the justiciable issues presented that are appropriately raised in a petition for the

extraordinary remedy of quo warranto. However, this Court will not grant the more expansive remedy of a declaratory judgment pursuant to Chapter 86, Florida Statutes, when such relief has not been sought by the pleadings. "It is well settled that when an award of relief is not sought by the pleadings, it is reversible error to grant such relief." McDonald v. McDonald, 732 So. 2d 505, 506 (Fla. 4th DCA 1999)(emphasis retained); see also Williams v. Primerano, 973 So. 2d 645 (Fla. 4th DCA 2008).

## Applicable Provisions of the City Charter

The issue before the Court, as framed by the Plaintiff, is whether the Defendant has "authority to prohibit all of City Council's communications with employees of the City of Pensacola." To resolve this issue, both parties agree the Court needs to interpret the City Charter.

Initially, the Court would note that the City Charter requires the Mayor, among other duties, to "enforce the charter." § 4.01(a)(2), Charter for the City of Pensacola. Furthermore, the City Council, among other powers and duties, has the authority to: "inquire into the conduct of any municipal office, department, agency or officer and to investigate municipal affairs, and for that purpose, may subpoena witnesses, administer oaths and compel the production of books, papers, or other evidence." § 4.02(a)(3), Charter for the City of Pensacola.

The Court has also considered that the City Charter provides the following:

> Except for the purpose of inquiries and investigations made in good faith, the City Council or Council Members shall deal with the City officers and employees, who are subject to the direction and supervision of the Mayor, solely through the Mayor. Neither the City Council nor Council Members shall give orders to any such officer or employee, either publicly or privately. It is the express intent of this Charter that recommendations for improvement of municipal governmental operations by individual Council Members be made solely to and through the Mayor.
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> § 4.04(b), Charter for the City of Pensacola. (Emphasis Added).

Mayor's May 15, 2012, Memorandum

The Mayor, in his memorandum, "request[ed]" that "all future communications and dealings between the individual City Council members and City employees be done through the Mayor." (Emphasis added). The Mayor also stated that "[a]ny request regarding operations and services and/or recommendations for improvement of municipal government operations by individual Council Members must be sent directly to the Mayor's office." (Emphasis added).

Analysis

The Court would note that statutory rules of construction apply to provisions of a city charter. Great Outdoors Trading, Inc. v. City of High Springs, 550 So. 2d 483 (Fla. 1st DCA 1989). The goal of statutory interpretation is to give effect to the Legislature's intent, which should be gleaned primarily

from the language of the statute at issue. It is axiomatic that, in construing a statute, courts must first look at the actual language in the statute. Woodham v. Blue Cross and Blue Shield of Florida, Inc., 829 So. 2d 891, 897 (Fla. 2002). In construing the plain language of a statute, courts are to give undefined terms their ordinary meanings, consulting a dictionary when necessary. State v. Gaulden, 37 Fla. L. Weekly D867 (Fla. 1st DCA April 12, 2012)(citations omitted)(emphasis added); see also, Green v. State, 604 So. 2d 471, 473 (Fla. 1992).

The Court will note that the City Charter offers no definition for the word "inquiry." As the term is used in the City Charter, the Court finds that an "inquiry" is a request for information. See Black's Law Dictionary (9th ed. 2009); see also, Inquiry Definition, Merriam-Webster.com, http://www.merriam-webster.com/dictionary/inquiry (last visited Sept. 24, 2012).

In construing the City Council's authority to conduct investigations, the Court has considered the definition of a "legislative investigation," which is "a formal inquiry conducted by a legislative body incident to its legislative authority." Black's Law Dictionary, (9th ed. 2009).

While the City Council has the authority to subpoena witnesses, administer oaths and compel the production of books, papers, or other evidence in conducting an investigation, the

Charter contains no provision limiting the City Council to conduct inquiries and investigations only in such a manner. Nor does the Court find that inquiries and investigations are limited only to issues of potential malfeasance. Nowhere in the City Charter is the word "malfeasance" used. "When construing statutes, '[i]nference and implication cannot be substituted for clear expression.'" Professional Consulting Services, Inc. v. Hartford Life and Accident Ins. Co., 849 So. 2d 446, 448 (Fla. 2d DCA 2003), citing Carlile v. Game & Fresh Water Fish Comm'n, 354 So. 2d 362, 364 (Fla. 1977).

Further, the Defendant's interpretation of a legislative body's powers of inquiry and investigation is contrary to the longstanding traditions of representative government in the United States. Tenney v. Brandhove, 341 U.S. 367, 377 (1951)(Investigations, whether by standing or special committees, are an established part of representative government). "The principle is longstanding that a legislature is vested with all investigative power necessary to exercise its function properly. See, e.g., McGrain v. Daugherty, 273 U.S. 135, 174 (1927) ('[T]he power of inquiry—with the process to enforce it—is an essential and appropriate auxiliary to the legislative function.')." Chesek v. Jones, 959 A.2d 795, 802 - 803 (Md. 2008).

The Court finds that, in general, the Mayor's Memorandum is not inconsistent with his authority under the City Charter. In general, the Mayor has the authority to regulate all communications and recommendations by individual City Council Members. The one exception is that the Mayor cannot regulate communications and "requests" that are good faith inquiries and investigations when undertaken under the authority of the City Council to conduct inquiries and investigations.

What is problematic is that the Mayor's memorandum (even if the Court were to accept the Defendant's definition of the words "inquiry" and "investigation") makes no exception for good faith inquiries and investigations by the City Council. The Mayor has no authority to direct that good faith inquiries and investigations, which would presumably fall within the ambit of the memorandum's command that "requests" be made by the City Council members, be made solely to the Mayor's office. The Mayor does not possess the power to control inquiries and investigations in such a manner. To the extent the Mayor's policy attempts to do so, he has acted without authority.

In resolving the instant complaint, the Court has considered whether the Mayor has attempted to properly limit the scope of his policy by requesting that individual Council member's "requests" (as opposed to "requests" of the City Council as a legislative body) are affected by the policy. Yet,

there can be little doubt that individual City Council members may conduct inquiries and conduct investigations on behalf of the City Council as a legislative body. The memorandum makes no exception for these "requests" by individual Council members that are on behalf of the City Council as a legislative body.[2] Thus, in this way, the Mayor's policy goes too far in its broad scope.

In all other respects, however, the Court finds the Plaintiff's complaint without merit. The Mayor, consistent with his authority under the City Charter, has the authority to enact a policy that requires communications by individual City Council members to City employees be made solely through the Mayor's office, unless such communications are good faith, bona fide inquiries or investigations.

Attorney's Fees

The Plaintiff has requested attorney's fees in this cause. The Court denies this request for three reasons. First, given the narrow scope of this Court's order, it is far from clear that the Plaintiff may be considered a "prevailing party."

[2] It may well be that the authority to conduct inquiries and investigations is vested in the City Council, not individual council members. See, e.g., Castro v. McNabb, 319 S.W.3d 721 (Tex. App.-El Paso 2009). The Court need not resolve this issue. The memorandum makes no distinction between inquiries by individual council members that are on behalf of the City Council as a body and inquiries by individual council members that are not made on the authority of City Council as a whole.

Second, the Court finds no authority for the Court to award attorney's fees against the City when the City is not a named party in this cause. See Thompson v. Hodson, 825 So. 2d 941, 953 (Fla. 1st DCA 2002)("Hodson simply offers us no authority for the proposition that attorney's fees may be recovered from non-parties.")

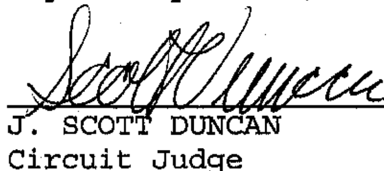
Third, the Plaintiff has failed to sufficiently demonstrate to the Court that this suit arose out of or is in connection with the performance of her official duties as a City Council member. "Florida courts have long recognized that public officials are entitled to legal representation at public expense to defend themselves against litigation arising from the performance of their official duties while serving a public purpose." Thornber v. City of Ft. Walton Beach, 568 So. 2d 914, 917 (Fla. 1990)(emphasis added); see also, Maloy v. Board of County Com'rs of Leon County, 946 So. 2d 1260, 1263 (Fla. 1st DCA 2007)("Our supreme court has enunciated a common law doctrine affording public officials the right to legal representation at taxpayer expense in defending themselves against litigation arising out of their public duties and while serving a public purpose.")(emphasis added). In this case, the Plaintiff's complaint was filed in her personal capacity, not in her capacity as a Member of the City Council. The Plaintiff has not alleged sufficient facts showing that her "requests,"

"inquiries" and "communications" that have gone "unanswered" were official good faith inquiries or investigations as permitted by the City Charter. The Court finds that the common law doctrine affirmed in Thornber does not apply to this case in its present posture. The Court will not award attorney fees to the Plaintiff in this case.

## Conclusion

Accordingly, it is ORDERED and ADJUDGED that the Plaintiff's Complaint for writ of quo warranto is GRANTED to the extent the Defendant's memorandum attempts to require that good faith inquiries and investigations by the City Council be directed only to the Mayor's Office. In all other respects, the complaint for writ of quo warranto is hereby DENIED.

DONE and ORDERED in Chambers, at Pensacola, Escambia County, Florida on this 28th day of September, 2012.



J. SCOTT DUNCAN
Circuit Judge

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by court 9-28-12 JW