

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

SHERRI F. MYERS,

Plaintiff,

v.

Case No.: 2012 CA 1527

Division: A

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

Defendant.

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**PETITIONER'S MOTION FOR CLARIFICATION OR REHEARING**

COMES NOW, SHERRI F. MYERS, Plaintiff/Petitioner, and pursuant to Fla. R. Civ. P. 1.530(a), hereby respectfully moves this court for clarification or rehearing on the Order entered by this Court in the above-styled action on September 28, 2012, and would establish as grounds therefor, the following:

**FACTS**

1. Petitioner filed a Complaint for Writ of Quo Warranto on June 20, 2012. The Court having found a prima facie case stated therein, called up for hearing the Mayor's authority to enact the communications policy complained of in the Complaint, which was based on an interpretation of Article IV, § 4.04(b) of the City of Pensacola Charter.
2. The Court having heard arguments of counsel on September 24, 2012, took the matter under advisement and issued an Order Granting Complaint for Writ of Quo Warranto In Part and Denying Complaint for Writ of Quo Warranto in Part on September 28, 2012.
3. On September 28, 2012, Mayor Hayward the Defendant in the above-styled cause

issued a formal statement in response to the Order issued by this Court on the same date stating “I appreciate Judge Duncan’s wisdom and his ruling today in support of my policy.” Attached hereto as Exhibit A.

4. In its Order issued in this matter the Court interpreted Article IV, § 4.04(b) of the City of Pensacola Charter and made explicit findings regarding that provision and words utilized in that provision.

5. In its Order issued in this matter the Court found that “inquiry” is defined as “a request for information.”

6. In its Order issued in this matter the Court also explicitly did not find that “inquiries and investigations are limited only to issues of potential malfeasance.”

7. In its Order issued in this matter the Court found that “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.”

8. In its Order issued in this matter the Court found that “the Mayor has the authority to regulate all communications and recommendations by individual City Council Members.”

9. In its Order issued in this matter the Court found that “[t]he 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.”

10. In its Order issued in this matter the Court found that “[t]he 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."

11. In its Order issued in this matter the Court found that "there can be little doubt that individual City Council members may conduct inquiries and may conduct investigations on behalf of the City Council as legislative body."

12. In its Order issued in this matter the Court, in footnote 2, stated that "It may well be that the authority to conduct inquiries and investigations is vested in the City Council, not individual council members."

13. Article IV, § 4.04(b) of the City of Pensacola Charter states "Except for the purposes of inquiries and investigations made in good faith, the City Council or Council Members ..." (Emphasis added).

14. In its Order issued in this matter the Court does not explain the purpose and legislative intent of Article IV, § 4.04(b) of the City of Pensacola Charter.

15. In its Order issued in this matter the Court does not explain the practical meaning of "undertaken under the authority of the City Council."

16. In its Order issued in this matter the Court does not address what the proper and practical limits are of a "request for information."

#### **LEGAL STANDARD**

A motion for clarification is the equivalent of a motion for rehearing. *Kirby v. Speight*, 217 So. 2d 871, 872 (Fla. 1st DCA 1969). As such, a motion for clarification is filed in accordance with Fla. R. Civ. P. 1.530(a). "A prime function of a [motion for clarification] is to present to the court some point which it overlooked or failed to consider..." *Hollywood, Inc. v. Clark*, 15 So. 2d 175, 180 (Fla. 1943).

## ARGUMENT

Given the language of the formal statement issued by the Mayor following the issuance of this Court's Order, Petitioner is compelled to respectfully request that this Court provide clarification of its Order, which would delineate the proper scope of the Mayor's communication policy authority, such that employees of the City of Pensacola, as well as Council Members, may be aware as to what the proper limits of a Council Members request for information is allowed to entail. As is clear from the Mayor's statement, he has declared that the Court has granted him the power to continue on with the same policy that was the subject of Petitioner's original complaint, indicating that he had never contested that Council Members may conduct inquiries. However, Respondent did, in fact argue, as noted by the Court in its Order, that inquiries and investigations were to be solely related to issues of potential malfeasance and that released statement indicates this will be the continued course which the Mayor pursues. This "malfeasance" interpretation was explicitly rejected by the Court in its Order. Respondent also argued that Council Members cannot contact City employees directly about issues raised by constituents who contact their respective Council Member to request or relay information. The Court did not specifically address this practical issue in its Order.

This Court, in no uncertain terms, defined "inquiry" simply as "a request for information." This Court also stated that these requests for information are allowed, so long as they are "undertaken under the authority of the City Council." Does the example of a constituent contacting their Council Member, and their Council Member relaying this information directly to a city employee, or requesting information based on that constituent request, constitute an action undertaken under the authority of City Council? Without this type of clarification, Petitioner feels that this Court's findings in this matter will go unresolved leading to further

misunderstanding and conflict with regards to the Mayor's communication policy. Petitioner also feels that this misunderstanding is perfectly expressed by the Mayor in his statement released regarding this Court's Order.

Petitioner also finds that there exists confusion regarding the nature of the power of inquiries. This Court in its Order states that "there can be little doubt that individual City Council members may conduct inquiries and may conduct investigations on behalf of the City Council as legislative body." However, in Footnote 2 the Court states "It may well be that the authority to conduct inquiries and investigations is vested in the City Council, not individual council members." This issue is further confused by the plain language of Article IV, § 4.04(b) of the City of Pensacola Charter which states "Except for the purposes of inquiries and investigations made in good faith, the City Council or Council Members ..." (Emphasis added). Clearly, § 4.04(b) makes a distinction between City Council as a whole and Council Members, indicating that individual Council Members may make requests for information. Thus, how does this Court's footnote 2 square with the Court's statement and the plain language of § 4.04(b) regarding the fact that individual Council Members can make requests for information?

§ 4.04(b), nor any provision of the Charter mentions the phrases "on behalf of the City Council as legislative body" or "undertaken under the authority of the City Council." As a result the authority of Council as a whole or as an individual Council Member, as it relates to communications with city employees is left up for multiple interpretations. Is an individual Council Member acting under the authority of Council when making a request for information to a city employee on behalf of a constituent who wants to know the date a stop sign will be installed? Or is an individual Council Member only acting under the authority of Council when making a request for information to a city employee on behalf of a constituent who wants to

know how the advertising budget for this year is broken down?

The Court also in its Order never expresses the legislative intent with regard to § 4.04(b), which is key to resolving the above issues. Understanding and therefore stating expressly and effectuating legislative intent is the end goal of statutory interpretation: “The intent of a statute is the law, and that intent should be duly ascertained and effectuated. This is the fundamental rule of construction to which all other rules are subordinate.” *Am. Bakeries Co. v. Haines City*, 180 So. 524, 532 (Fla. 1938) (quoting *People's Bank v. Arbuckle*, 82 Fla. 479, 90 So. 458, 459 (Fla. 1921)) (internal quotations omitted). “To discern legislative intent, courts must consider the statute as a whole, including the evil to be corrected, the language, title, and history of its enactment, and the state of law already in existence on the statute.” *State v. Anderson*, 764 So.2d 848, 849 (Fla. 3d DCA 2000) (citing *McKibben v. Mallory*, 293 So.2d 48, 52 (Fla.1974)).

Because the legislative intent of § 4.04(b) was never made explicit by this Court, it is easy to understand why the Mayor in his statement claims that this Court’s decision was wholly in support of his policy. Without a definitive statement as to the intent of the provision there are questions left open which must be answered, such as, is the purpose of § 4.04(b) of the Charter designed to prevent Council Members from communicating constituent concerns to city employees? Or is the clear purpose of that section intended to prevent Council Members from giving orders and making recommendations for municipal improvement to city employees? Petitioner asserts this provision’s intent is clear, as § 4.04(b) is found under the Prohibitions section of the Charter. That provision is entitled “Interference with Administration.” Thus, that section is intended to prevent Council Members from acting as backseat drivers, by telling City employees what to do and what not to do, i.e., giving them orders or telling them how their operations of the city can and should be improved. That section, as indicated by the title, is not

designed in any way to prevent communications between Council Members and City employees. Titles of provisions are key to understanding the purpose of a provision “[t]he title is more than an index to what the section is about or has reference to; it is a direct statement by the legislature of its intent.” *State v. Webb*, 398 So. 2d 820, 825 (Fla. 1981); *Berger v. Jackson*, 156 Fla. 251, 768, 23 So.2d 265 (1945). Only if the purpose and intent of § 4.04(b) is clearly explicated by this Court can the issues in this case be finally resolved. Otherwise, according to the Mayor’s statement, he will continue to enforce his policy without change and will effectively be left to provide his own interpretation of this Court’s decision, an interpretation which is contrary to this Court’s Order issued in this matter.

Lastly, this Court may not have considered the legislative history of this provision which was taken from the Model Charter as there was no mention of it in the Order. This allegation of the provision being taken from the Model Charter is proven by the head of the Charter Review Commission, Crystal Spencer, who read aloud to City Council the commentary from the Model Charter provision. Petitioner attached the videotaped statement to her Memorandum of Law which was filed on September 4, 2012. This is evidence of the clear legislative history and intent of the provision and should not be overlooked when interpreting § 4.04(b). Florida courts have made clear that the intent of a provision is “the fundamental rule of construction to which all other rules are subordinate.” *Am. Bakeries*, 180 So. at 532. Courts in ascertaining intent “must consider ... [the] title and history of its enactment...” *Anderson*, 764 So.2d at 849; *see Foley v. State*, 50 So.2d 179, 184 (Fla.1951).

Intent must be given the last word in matters of interpretation, as the Florida Supreme Court stated: “Legislative intent is the polestar by which the court must be guided, and this intent must be given effect even though it may contradict the strict letter of the statute. *State v.*

*Webb*, 398 So. 2d 820, 824 (Fla. 1981); *Vildibill v. Johnson*, 492 So. 2d 1047, 1049 (Fla. 1986).

Thus, though the language of a provision may be clear, if the resulting interpretation results in a contrary result from the legislative intent, it is the legislative intent which must be given effect.

Insofar as this Court may not have considered the title of § 4.04(b), or the legislative history, as evidenced by the Model Charter provision and commentary which were attached to Petitioner's Complaint, coupled with the videotaped statement of the Head of Charter Review Commission reading that commentary and speaking to how it was utilized in the revision of that Charter provision, Petitioner respectfully asserts the Court may have inadvertently overlooked these key issues and evidence which would either assist in clarifying this Court's Order or would provide for a different holding altogether. Thus, clarification by a statement from this Court of § 4.04(b)'s intent should alleviate the confusion which exists in the party's opinions about the Order. However, should the Court desire, Petitioner would offer to present further evidence of these matters at a rehearing on these issues.

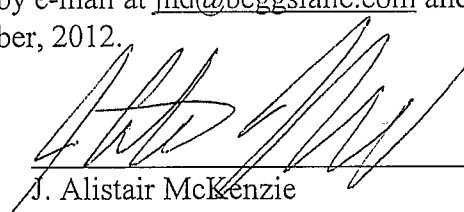
### CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests this Court clarify its Order of September 28, 2012, or in the alternative, grant a rehearing on these matters.



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on J. Nixon Daniel, III, Esquire, **Beggs & Lane, RLLP**, 501 Commendencia Street, Pensacola, Florida 32502, by Hand Delivery, and by e-mail at [jnd@beggslane.com](mailto:jnd@beggslane.com) and at [ch@beggslane.com](mailto:ch@beggslane.com), this the 2<sup>nd</sup> day of October, 2012.



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## Alistair McKenzie

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To: Sherri Myers  
Subject: RE: Records Request - Press Release

From: Derek Cosson  
Sent: Tuesday, October 02, 2012 9:37 AM  
To: Robyn Tice  
Cc: Ericka Burnett  
Subject: RE: Records Request - Press Release

We did not send out any press release on that issue. I did distribute the following statement on behalf of the Mayor:

I appreciate Judge Duncan's wisdom and his ruling today in support of my policy. As I have said before, and Judge Duncan confirmed today, the Charter is very clear on this point: Communications by individual Council members to City employees must be made solely through the Mayor. My memorandum did not seek to limit the power of the City Council as a legislative body, or an individual Council member authorized by the full Council, to make good faith, bona fide investigations or inquiries as provided in the Charter.

It's not fair to City employees to be put on the spot, pushed or pulled, or put in uncomfortable or inappropriate situations. This policy puts in place a simple and reasonable system to protect them. Next week, I will reach out to Councilwoman Myers, and I hope we can continue to build our relationship and work together to move our City forward. I value her ideas, her input, and her experience, and I am delighted to put this issue behind us. Now is the time to move forward together.

Derek Cosson  
Public Information Officer  
City of Pensacola

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Pensacola, FL 32502  
Work: (850) 436-5626  
Cell: (850) 530-6133

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For Non-Emergency Citizen Requests, Dial 311 or visit  
Pensacola311.com<<http://www.pensacola311.com/>>.

Notice: Florida has a very broad public records law. Most written communications to or from state and local officials regarding government business are public records available to the public and media upon request. Your email communications may be subject to public disclosure.

