

Office of  
City Attorney

MEMORANDUM

City of  
**Pensacola**



*America's First Settlement  
Established 1559*

To: Dr. Lila Cox, City Council Executive

Date: November 14, 2012

Re: Proposed Council Investigation of the Mayor

1. At the outset I would note that this is not a formal legal opinion but is written at your request in an effort to assist you in the discharge of your duties as Council Executive. Last night I explicated several concepts that I believe will assist Council in this matter as follows:

a. The concept that a man is presumed innocent until proven guilty. The Mayor has every right to the presumption of innocence, the strongest presumption in the law, until proven otherwise. A rush to judgment adversely affects the credibility of the Council, as well as any resulting decision. In this matter, the cart appears to be put before the horse.

b. Dovetailing with that concept is an analogous concept that a person has the right to be judged by an impartial jury. Should any of the Council or the Council as a whole be determined to be bias or prejudiced against the Mayor before the investigation, that would provide a basis to nullify any action taken, as well as the integrity of the investigation.

2. The analytical framework that I recommended is as follows:

a. Despite much discussion, from a legal standpoint, until there are sworn statements that give rise to a finding that the Mayor did something illegal, unethical or contrary to his Charter imposed duties, there is simply nothing to investigate.

b. After an analysis of the statements, Council must determine what, if any violation of the Charter occurred. It would seem that there is a consensus that no criminal or civil violation or no ethical violation occurred; therefore, it leaves a potential Charter violation as the only reason to continue the process.

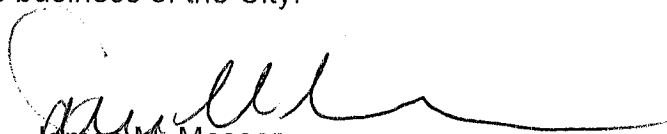
c. If the Council determines a Charter violation occurred, Council would determine if they have any Charter power to discipline the Mayor, what form that discipline should take and how it can be enforced.

3. As we discussed, this matter raises significant first impression issues including, but not limited to, whether the Council can subpoena the Mayor, whether the Mayor has a duty to obey the subpoena, whether Council can enforce the subpoena against witnesses who refuse to comply with their subpoena and who, what, when and where are any witnesses to be interviewed. This begs the obvious issues of private investigators to serve subpoenas and perform follow up duties, compiling the results and payment for the investigation.

4. Neither the Council nor the City possess the resources necessary to conduct a thorough investigation. I would recommend Council consult with a respected and credible outside attorney in order to investigate this case. In this City we have a retired Florida Supreme Court Justice as well as several retired Circuit Court Judges that would fit the bill. Other City Attorneys and Administrators have taken the same approach.

5. At this point, I have not been provided with either an adequate basis for an allegation of a Charter violation or an existing Charter remedy.

6. This should give you a small window into the journey that Council is about to embark upon. In light of the fact that a majority of both civil and criminal cases are resolved by compromise and settlement, I would again encourage the parties to resolve this matter and proceed with the business of the City.



James M. Messer  
City Attorney