



OFFICE of the CITY ATTORNEY

February 7, 2014

Dirk M. Smits, Esquire
Vernis & Bowling
81990 Overseas Highway, 3rd Floor
Islamorada, Florida 33036

Re: Airport concession

Dear Mr. Smits:

This will serve to respond to your correspondence of February 5, 2014, as well as transmit the enclosed opinion. The opinion was transmitted to the Council on this date.

Please feel free to contact me at (850) 435-1619 if you have further comments or inquiries concerning this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Messer", written over the typed name.

James M. Messer
City Attorney

JMM/jlm

Enclosure

cc: Ashton J. Hayward, III, Mayor
Members of City Council
Colleen Castille, City Administrator
Tamara Fountain, Communications Administrator
Greg Donovan, Airport Director



ALLEN NORTON & BLUE

PROFESSIONAL CORPORATION

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February 6, 2014

VIA ELECTRONIC MAIL
jmesser@cityofpensacola.com

James M. Messer
City Attorney, City of Pensacola
222 W. Main St.
7th Floor
Pensacola, FL 32502

Re: Airport Food and Beverage Services Contract

Dear Mr. Messer:

This legal opinion concerns the City Council's authority to contract with a provider of food and beverage services at the Pensacola Regional Airport ("Airport") without the Mayor's approval. The Airport is owned and operated by the City and the current Food and Beverage Lease and Concession Agreement ("the Agreement") is set to expire on March 31, 2014. During the most recent City Council meeting, the Council moved to extend the contract with the current vendor without the Mayor's consent. It is my understanding that the motion ultimately failed and a question has arisen as to whether the Council has the authority to unilaterally contract for food and beverage services at the Airport. As more fully articulated herein, it is my legal opinion that the Council may not contract for any services at the Airport without the Mayor's written authorization.

The respective authority of the Mayor and Council is generally defined in the City's Charter and articulated in further detail through specific City ordinances. The City's Charter does not address the Airport. The City's ordinances, however, provide a variety of provisions governing the Airport's operation. Specifically, Ordinance 10-2-6, General Rules and Regulations, states:

Special services may be rendered or special facilities may be provided on such terms as the council may prescribe from time to time. No person shall use the airport as a base or terminal for the carrying on of commercial aviation or agricultural aviation, or the carrying of passengers, freight, express or mail, or student flying, communications, or for other commercial transportation, or

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carrying on activities of a commercial nature upon the airport premises, or for the sale of fuel, refreshments or commodities or for any other commercial purpose, or on the airport premises solicit fares, alms or funds for any purpose or make any sale, expose any article for sale or charge an admission fee, unless specifically authorized in writing by the mayor.

Pensacola, Fl., Title X, art. I, § 10-2-6 (2014).

The Ordinance effectively prohibits the use of the Airport for any commercial purpose without the Mayor's express authorization. Accordingly, it does not appear that the Council may extend or otherwise enter into a contract for the Airport's food and beverage services unless the Mayor provides written authorization.

Although the Mayor's contractual authority with respect to the Airport is defined, a larger issue remains as to the interplay between executive and legislative authority and the power to contract in general. The City's recent change to a Mayor-Council form of government raises this issue to one of acute importance. Notwithstanding its importance, however, this Opinion is limited to the Mayor's authority regarding the Airport and thus whether the Mayor's approval is a necessary predicate for the efficacy of all City contracts is beyond the scope of this opinion.

Please feel free to contact my office at your convenience with any questions or for a more detailed explanation of any of the legal opinions expressed in this correspondence.

Sincerely



Robert E. Larkin, III