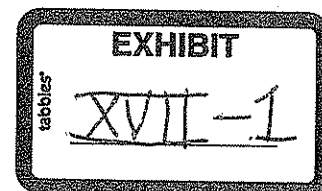


Timeline: Repealing of Civil Service Act
Summary of Document Review
February 29, 2016



Background

The 2010 Charter of the City of Pensacola, approved by voter referendum, established a City Council/Mayor form of government and shifted many of the powers formerly held by the City Council to the elected Mayor. Because of the change in the form of government, the law firm of Allen, Norton & Blue was engaged to review the effects of the newly adopted Charter on the Civil Service Act. Allen, Norton & Blue reviewed the pertinent documents and issued legal opinions concerning the Mayor's authority to appoint, discipline and remove officers and employees as well as the Mayor's authority to determine the organizational structure of the City.

In an opinion dated August 19, 2011, Allen Norton & Blue issued a legal opinion which concluded that the Mayor may exercise his authority under the Charter to create positions within the City and fill them with the candidates of his choice without regard to the conflicting language in the Civil Service Act which predated the Charter (Attachment #1).

In an opinion dated October 28, 2011, Allen Norton & Blue opined that the Mayor has "the power to appoint, discipline and remove all officers and employees" as well as the power to take any and all other personnel actions previously administered or undertaken by the Civil Service System/Board, as stated in Section 4.01 of the 2010 Charter, regardless of any and all conflicting language and provisions of the Civil Service Special Act (Attachment #2).

In response to these legal opinions, City Administrator Bill Reynolds emailed the City Council on November 10, 2011 and attached the October 28, 2011 Allen, Norton & Blue opinion (Attachment #3). The purpose of the email was to inform the City Council that even though the Charter gives the Mayor the power to administer all personnel actions previously administered by the Civil Service Board, that for the time being there would be no change to the current procedures. Mr. Reynolds also indicated that in the future, in-depth personnel procedures would be brought forward.

On the same day (November 10, 2011), Chief of Staff John Asmar emailed all City employees also relaying the legal opinion and analysis contained in the October 28, 2011 Allen, Norton & Blue opinion (Attachment #4). Mr. Asmar's email provided the same conclusion as the one sent by Mr. Reynolds, however, Mr. Asmar's email did indicate that when exercising the Mayor's Charter authority, the Mayor must adhere to the public employee's collective bargaining rights which continue to have vitality pursuant to Florida Statutes. He also stated that upon further inquiry, the Mayor was also advised that failure to address the Charter's effect on the Civil Service Act may waive the City's right to do so in the future.

On November 28, 2011, Civil Service employees Suzanne Humphrey (Director of Civil Service) and Debra Nichols (Administrative Secretary-Civil Service) were reassigned to the Human Resources Division with the job titles of Assessment & Development Manager and Administrative Secretary respectively (Attachment #5). Their job duties technically remained unchanged, however, one of Ms. Humphrey's assignments was

to draft the new Personnel Administration Policy that would be effective upon termination of the Civil Service Act. A final draft of the Personnel Administration Policy was emailed to the Chief Financial Officer on February 12, 2012 (Attachment #6).

Repeal of the Civil Service Act

During the 2013 Legislative Session, HB 4053 was introduced to repeal the Civil Service Act of the City of Pensacola (Attachment #7). The bill passed the House and Senate and was signed into law by the Governor on June 28, 2013. The bill analysis states that many provisions of the Civil Service Act were replaced with the adoption of the 2010 Charter and that due to the development of collective bargaining units over 80 percent of the City's employees do not rely on any facet of the Civil Service Act. The analysis also states that for those employees still reliant on the Civil Service Act, the City intends to adopt a new policy that would largely mirror the Act but also reflect the changes made in the City's form of government.

The accompanying Local Bill Staff Analysis mentions that upon repeal of the Civil Service Act, the City of Pensacola's Human Resources Office intends to implement a replacement policy known as the Personnel Administration Policy (Policy) (Attachment #8). This Policy, a merit-based personnel system, would apply to all City employees not otherwise covered by a collective bargaining agreement. The Policy was written to largely mirror the currently used provisions of the Civil Service Act with a few changes that give employees more employment-based rights. These include an administrative appeal process to resolve non-disciplinary complaints, mediation before hearing disciplinary appeals, merit-based employment and promotions, the prohibition of nepotism and an outlined method for lay-offs.

The analysis states that upon repeal of the Civil Service Act, the City's Human Resources Office intends to create an Independent Personnel Board (Personnel Board). Like the Civil Service Board, this board would:

1. handle minimum qualification changes.
2. hear disciplinary appeals from city employees not otherwise protected by collective bargaining contracts, and
3. be provided an attorney.

The Personnel Board would be composed of three members: one selected by the mayor, one selected by the employees and one selected by the first two. Each member would serve two years. The existing Civil Service Board would assume the role of the new Personnel Board, where the members would finish their current terms and then hold elections according to the policies governing the Personnel Board.

The analysis also stated that the Policy varies from the Civil Service Act in that it reflects the governmental structure change from the Council/Manager form to the Council/Mayor form of government. For example, the Policy states that all City employees are at will and the Mayor is the official responsible for all employment. Therefore, the Mayor may alter the Policy or the terms of any City employee's employment.

On July 8, 2013, Suzanne Humphrey, Assessment & Development Manager with the Human Resources Division, emailed the Department Directors notifying them that the Civil Service Act had been repealed

and that the Personnel Administration Policy was now in effect (Attachment #9). The Human Resources Manual was subsequently updated for the new Policy in December 2013 (Attachment #10). On January 3, 2014, Suzanne Humphrey, Assessment & Development Manager and Sherrer Kuchera, Human Resources Administrator, retired from the City (Attachment #11).

It should be noted that differences exist between the final version of the Personnel Administration Policy that was emailed to the Chief Financial Officer on February 12, 2012 (Attachment #10) and the December 2013 version of Chapter F, Administrative Appeals and Discipline, contained in the Human Resources Manual (Attachment #11). The most notable difference is the change in the appointment of the Personnel Board. The Policy emailed to the Chief Financial Officer contemplated that the Civil Service Board would continue to serve on the Personnel Board until their regular term of office expired. Thereafter, elections would be held on the third Tuesday in June. The December 2013 Human Resources Manual states that the first election of the Personnel Board will be held as soon as practical. There is no mention of the Civil Service Board assuming the role of the Personnel Board in the Human Resources Manual.

In February 2014, a new Chief Human Resources Officer was hired by the City (Attachment #12). The question of establishing a Personnel Board did not occur until October 2015 when an employee in the Housing Division was disciplined and appealed the disciplinary action. On October 19, 2015, the Chief Human Resources Officer emailed stating that an election of the Personnel Board would occur in December 2015 and outlined the procedures for nominating and electing the employee representative to the Board (Attachment #13).

Due to the lack of overall employee response, review of the aforementioned documents and legal opinions and to more clearly reflect the Mayor's authority granted in the 2010 Charter, the Chief Human Resources Officer recommended that the policy be revised to not establish the Personnel Board. Revisions to the Policy were initiated on November 25, 2015 (Attachment #14). An email was sent by the Chief Human Resources Officer on December 1, 2015 notifying that the Personnel Board election had been canceled (Attachment #15).

The changes in the Human Resources Manual were discussed at the February 11, 2016 City Council Meeting. Councilmember Bare reviewed the 2013 Legislation that repealed the Civil Service Act and noted that in the Local Bill Staff Analysis (Attachment #8) that the attorney for the House State Affairs Committee interviewed representatives from the City's Human Resources Division who stated that upon repeal of the Civil Service Act, a Personnel Administration Policy similar to the Civil Service Act would be implemented. Councilmember Bare mentioned that he called the House State Affairs Committee and was informed that there was nothing binding that required the City to implement the Personnel Board as far as the State was concerned (Attachment #16).

It should be noted that the Local Bill Staff Analysis mentions that the Personnel Administration Policy would reflect the City Council/Mayor form of government and vary from the Civil Service Act in that the Mayor may alter the Policy or the terms of any City employee's employment.

Conclusion

The sequence of events and communications detailed above and attached reflect the following:

1. The adoption of the 2010 Charter by the citizens provided the independently elected Mayor with full authority to hire, discipline and terminate all employees whose employment was not regulated by the collective bargaining rights of the Florida Constitution and Statutes – a power previously possessed by the City Council under the 1931 Charter and exercised through a City Manager employed by the City Council.
2. The authority of an external board having the power to determine hiring, disciplining or terminating City employees is inherently inconsistent with the 2010 Charter which conferred the authority to hire, discipline and terminate the City's "at will" employees to the Mayor.
3. The intentions conveyed by the City Administration to the local legislative delegation during the process of repealing the Civil Service Special Act were not executed and should not be interpreted to mean that the Mayor would appoint an independent board and delegate all of his Charter authority regarding employment to that board (it is doubtful if that would even be lawful). Rather the commitment was to put in place a mechanism for non-union employees to use to foster an environment of fairness and integrity in the workplace. The Mayor's interest is not in divesting his office of its authority in any respect, but it is to insure that all employees that he hires are qualified to perform their job, fairly treated by supervisors, promoted on the basis of performance and value, and are not terminated unfairly.