

MEMORANDUM

TO: Ericka Burnett, City Clerk

RE: Arrangements for Invocations at Council Meetings

DATE: August 14, 2014

This memorandum is prepared in response to several citizen comments and inquiries submitted to your office recently pertaining to the United States Supreme Court's decision in May 2014, in the case of *Town of Greece, New York v. Galloway*. You have inquired whether the procedures your office has followed for a long time must be altered in light of that decision. The Pensacola City Council has relied on the Clerk's office to obtain an individual to deliver an invocation at the beginning of City Council meetings, or call upon a volunteer member of Council to deliver such an invocation on occasion. Your office has selected a variety of clergy or religious leaders from lists of religious institutions in the Pensacola-Escambia area, without discriminating or excluding any of them. Invocations have been delivered by leaders from all religions and creeds in our community, including leaders from Christian, Jewish, Mormon, Islamic, Unitarian, and agnostic faiths or beliefs. One of your correspondents has been selected to deliver the invocation on two occasions in the past, at his request or insistence, even though he is not identified or recognized as a leader of any organization or group. It commonly occurs that the individual delivering the invocation requests, as a courtesy and not as a command, that all in the room rise while the invocation is delivered. Of course, there is no requirement to conform or penalty applied if any individual attending a council meeting fails to participate in the invocation.

For the reasons summarized below, I am of the opinion that the Council's procedures amply comply with the majority decision in the *Galloway* case and there is no basis for altering them if you and the Council so choose.

Greece is a town of 94,000 in upstate New York State, and in 1999 it began including an invocation at the beginning of its town council meetings. A town employee would call local clergymen listed in a local directory until a minister accepted an invitation to attend a meeting and deliver the invocation. Eventually, a list was compiled of ministers who would agree to perform the service, and that list was used thereafter. Most ministers were Christian, and made frequent references to Jesus, the Lord, and related Christian prayers. Many asked all in attendance to stand and bow their heads during the invocation. With few exceptions illustrated by the Court in its decision, most ministers invoked divine guidance, prayed for peace and wisdom, and avoided criticism of the beliefs or behavior of others or proselytizing.

The Supreme Court's decision is fractionated, with 5 justices in agreement on a portion of the decision and the result, and with several justices concurring separately or authoring dissents. The guidance of the decision comes from the 5-justice plurality decision. In short, the 5-justice plurality held that the

practices and procedures of the town were lawful (not unconstitutional). Since our own practices are the same, I believe the Court's conclusion also applies to the City of Pensacola.

The guidance from the Court's opinion is that an informal method for selecting prayer givers is approved, and the content of the prayers can be secular to a point. There should not be a pattern of religious speakers who are critical of other religions or disparage other faiths, or who attempt to convert the City's audience to their faith (proselytize), or who "threaten damnation."

There is no fixed requirement for broad diversity of speakers, no requirement for a fixed and rotating list of speakers, no prohibition on council members delivering an invocation, and no requirement to include anyone who asks to deliver an invocation who would otherwise not be asked to do so.

Please advise if you require further input from me on this subject.

Cc: Jim Messer, Esq.

Stephanie Tillery, Esq.

Tamara Fountain