



OFFICE of the CITY ATTORNEY

August 9, 2016

Peter Penrod, Esquire
Office of the General Counsel
Office of the Governor
Room 209, The Capitol
Tallahassee, Florida 32399-0001

Dear Mr. Penrod:

Thank you for providing me with an opportunity to address the communication which City of Pensacola Councilman Charles Bare sent to the Administration Commission on August 5, 2016, stating that the City's appeal is "being pursued solely by the executive branch (Mayor's office)," and that "The Pensacola City Council has not taken any action in regards to this appeal." Neither of these statements are accurate, and my action in filing this appeal on behalf of my client, the City of Pensacola, is both well within my authority under the Charter as City Attorney and was compelled by my ethical obligations as articulated in The Florida Bar's Rules of Professional Responsibility.

I am attaching a portion of the City of Pensacola's Charter (Attachment 1), for your convenience. Briefly, in 2010, the City transitioned from a Council-Manager form of government to a Mayor-Council structure, with an independently elected Mayor and an eight member City Council. The Charter provides that the City Attorney is solely responsible for asserting and defending the City's legal position in all legal matters involving the City. Thus, the Charter itself establishes a broad, general engagement and identifies the City Attorney as the exclusive legal representative, absent a conflict of interest. See, Attachment 1. Under the Rules of Professional Responsibility, my client is the City itself, not the Mayor alone, nor the City Council alone, nor any individual member of the City Council.

With respect to the distribution of the gas tax issue which is the subject of the appeal to the Administrative Commission, the prior actions of the City Council and the Mayor have established the position of my client, the City. The City Council voted 6-1 (Bare dissenting) on September 17, 2015, to claim the City's statutory share of the gas tax proceeds, rejecting a lower amount offered by the County at that time. Again on July 14, 2016, on the same day that the County adopted its Resolution 2016-93 establishing the City's share at 6.99%, the City Council voted unanimously to support a proposed Interlocal Agreement which would provide the City with a higher share to which it believes it is statutorily entitled. Throughout this time frame from 2015-2016, both the Mayor and the City Council have jointly established the City's position on this issue – with the lone dissenter being Councilman Charles Bare, who spoke against the City's position at a County Commission meeting and who has now written to your office.

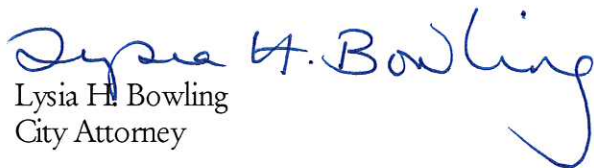
Letter to Peter Penrod
City of Pensacola Administrative Appeal – Local Option Gas Tax
August 9, 2016
Page 2

When Escambia County staff communicated with us a few days ago and indicated that the County Commission was postponing consideration of the City's proposed Interlocal Agreement to a date beyond the 21-day appeal deadline to appeal from the County's adoption of Resolution No. 2016-93, I composed and timely filed the City's appeal. As The Florida Bar Rules recognize, "A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation." (Rule 4-1.2, Objectives and Scope of Representation). Had I not done so, the City's right to assert and defend its position to its statutory share of the gas tax would have been irretrievably lost, and my legal obligation was to prevent that from occurring.

I have subsequently provided the City Council with two written communications about this matter, and I also provided a verbal summary at its Agenda Conference yesterday (Attachment 2, emails and transcript of August 8, 2016), and no member of Council indicated any objection to or disagreement with the action which was taken on the City's behalf.

In sum, I am the City Attorney, I represent the City of Pensacola, and the City of Pensacola has filed its timely appeal with the Administration Commission. We wish to thank the Commission in advance for its consideration of our appeal.

Sincerely,


Lysia H. Bowling
City Attorney

ATTACHMENT 1

Section 5.03. City Attorney.

The City Attorney shall serve as the chief legal adviser to, and shall represent, elected or appointed officials, boards and commissions, and employees in the course and scope of their official duties or employment, respectively. The City Attorney shall represent the City in legal proceedings and shall perform any other duties prescribed by State law, by this Charter, or by ordinance or resolution. The Mayor shall appoint the City Attorney, with the consent of the City Council by an affirmative vote of a majority of City Council Members. The City Attorney may be removed from office with the concurrence of the Mayor and a majority of the City Council.

Section 4.02. City Council.

(6) The City Council shall establish an Office of the City Council and shall have as its staff the following who shall be responsible to the City Council through the President of the Council: (a) Budget Analyst. The City Council is authorized to employ a Budget Analyst or an individual with similar qualifications, pursuant to the City's position classification code, to assist the budgetary matters of the City Council. The City Council, by ordinance, shall define the qualifications, pay and responsibilities of said employee in accordance with the City's position classification code. The employee shall be subject to termination by a majority vote of the City Council; (b) Legal Aide. The City Council may appoint one assistant city attorney, whose salary shall be in accordance with those established for other assistant city attorneys. Said assistant city attorney shall (1) serve only in an advisory capacity to the City Council, and shall perform only such duties of a technical nature, including drafting of ordinances, legal research and providing advisory opinions, as requested by the City Council through its President, (2) perform such other duties required of him by the city attorney with the concurrence of the President of the City Council, (3) be subject to termination by a majority vote of the City Council; and (4) be responsible to the City Council through the President of the Council. Said assistant city attorney shall not file suit or bring or defend any action in court on behalf of the City Council, Mayor, the several departments, officers, and boards of the City government except with written authorization of the City Attorney. No action or opinion of said assistant city attorney shall be construed to be the official legal position of the City, and such official legal positions and actions shall be solely within the scope and powers and duties of the City Attorney; (c) Council Executive. The City Council is authorized to hire a Council Executive. The City Council shall define the qualifications, pay and responsibilities of said employee in accordance with the City's position classification code. The employee shall be subject to termination by a majority vote of the City Council; (d) Executive Assistant. The City Council is authorized to hire an Executive Assistant. The City Council shall define the qualifications, pay and responsibilities of said employee in accordance with the City's position classification code. The employee shall be subject to termination by a majority vote of the City Council; and (e) Other Staff. The City Council may create and fill other staff positions for the purpose of assisting it in the performance of its legislative function.

ATTACHMENT 2

CITY OF PENSACOLA
AGENDA CONFERENCE
AUGUST 8, 2016

Comments by City Attorney Lysia Bowling Regarding LOGT Appeal

Communications: City Attorney's Communication

Beginning at Minute Mark – 33:00

Council President Bare: Ok, move on to City Attorney's Communication. Ms. Bowling, do you have anything to communicate?

Lysia Bowling: I do Council President, members of Council. As you are aware, I filed an appeal to the Florida Administration Commission to preserve the City's right to have the Commission make a determination as to the dispute we have over the fair share that the City is entitled to by Statute for the Local Option Gas Tax. I've sent you two emails subsequent to the papers...the petition, and in those emails I've advised you of the City's position and the importance of preserving this right of appeal and I want to reaffirm my commitment to you that I'll continue to update you, City Council, about the progress of the matter as it goes before the Board.

Let me just say...I don't want to state what's just so very elementary and fundamental, as far as the filing of the case, but it is my duty as the independent legal advisor of the City to take action that I deemed is in the City's best interest. Not based on direction of the Mayor. Not based on direction of City Council. And as you know my client is the City. Not an individual Council Member, the City Council or the Mayor. So, in order to preserve a very important opportunity to have the Commission make a determination as to the correct formula...the distribution formula...I decided that it would be in the City's best interest to invoke and file this action. Indeed, had I not done so we wouldn't be having this discussion today about the appeal. So the appeal was timely filed and it was in the City's best interest for me to do that. And so I did.

Council President Bare: Any questions? Alright let's go to the Monthly Crime Report. Chief Alexander.

Ends at 35:40

Lysia Bowling

From: Lysia Bowling
Sent: Wednesday, August 03, 2016 3:52 PM
To: Ashton Hayward; 'district4@myescambia.com'; 'fmccall@centuryflorida.us'; Eric Olson; 'admin@myescambia.com'
Cc: Dick Barker Jr; 'aaperdue@co.escambia.fl.us'; 'Thomas.Cloud@gray-robinson.com'; P.C. Wu; Sherri Myers; Andy Terhaar; Larry B. Johnson; Gerald Wingate; Brian Spencer; Jewel Cannada-Wynn; Charles Bare; Don Kraher
Subject: FW: City of Pensacola Appeal
Attachments: City of Pensacola Appeal.pdf

Please be notified of the attached appeal on the Six-Cent Local Option Gas Tax.

Should you have any questions, please contact me.

Thank you.

Lysia H. Bowling
City Attorney
222 W. Main Street
Pensacola, Florida 32502
E-mail lbowling@cityofpensacola.com
(850) 435-1615



For Non-Emergency Citizen Requests, Dial 311 or visit Pensacola311.com

Notice Florida has a very broad public records law. As a result, any written communication created or received by City of Pensacola officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this office; instead, contact our office by phone or in writing

From: Lysia Bowling
Sent: Wednesday, August 03, 2016 3:48 PM
To: 'AC.Clerk@LASPBS.STATE.FL.US' <AC.Clerk@LASPBS.STATE.FL.US>
Cc: 'Barbara.Leighy@LASPBS.STATE.FL.US' <Barbara.Leighy@LASPBS.STATE.FL.US>
Subject: City of Pensacola Appeal

Attached is an appeal by the City of Pensacola of the Six Cent Local Option Fuel Tax. You have received previous correspondence from the City that this appeal was coming.

Please let me know that you have received this appeal.

Should you have any questions, please contact me.

Thank you again for all of your assistance in this matter.

Lysia H. Bowling
City Attorney
222 W. Main Street
Pensacola, Florida 32502
E-mail lbowling@cityofpensacola.com
(850) 435-1615



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Lysia Bowling

From: Lysia Bowling
Sent: Thursday, August 04, 2016 4:49 PM
To: Dick Barker Jr
Subject: FW: City of Pensacola Appeal

From: Lysia Bowling
Sent: Thursday, August 04, 2016 4:49 PM
To: P.C. Wu <pcwu@cityofpensacola.com>; Sherri Myers <smyers@cityofpensacola.com>; Andy Terhaar <aterhaar@cityofpensacola.com>; Larry B. Johnson <ljohnson@cityofpensacola.com>; Gerald Wingate <gwingate@cityofpensacola.com>; Brian Spencer <bspencer@cityofpensacola.com>; Jewel Cannada-Wynn <jcannada-wynn@cityofpensacola.com>; Charles Bare <cbare@cityofpensacola.com>; Don Kraher <DKraher@cityofpensacola.com>
Subject: City of Pensacola Appeal

Dear City Council President Bare and Members of City Council:

As you are aware, yesterday afternoon I sent to each of you a copy of the appeal which I filed with the Governor's Office sitting as the Florida Administration Commission, pertaining to the issue regarding the County's distribution of the Six Cent Local Option Fuel Tax. I would like to now provide you with a brief explanation as to why that measure was taken.

After a great deal of research and several communications with the Governor's Office, I concluded that the City's position in receiving its fair share of that revenue as provided by Florida statute required that an appeal be filed from the County's adoption of its Resolution 2016-93 of July 14, 2016. The applicable procedure provided us with a 21-day period to file our appeal, with the outside deadline being today – August 4, 2016.

The City's pledge to fulfill the bond covenants and the need to preserve our position in the event that efforts to resolve this dispute do not prove fruitful, compelled this step to be taken. If the City does not protect its position, its taxpayers will stand to lose approximately 7.3 million dollars in revenue. In the event that agreement with the County is reached, this appeal may be voluntarily withdrawn.

If any member of City Council requires further information, please do not hesitate to contact me.

Thank you,

Lysia H. Bowling
City Attorney
222 W. Main Street
Pensacola, Florida 32502
E-mail lbowling@cityofpensacola.com

(850) 435-1615



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