



# Pam Childers

Clerk of the Circuit Court and Comptroller, Escambia County

Clerk of Courts • County Comptroller • Clerk of the Board of County Commissioners • Recorder • Auditor

August 21, 2024

**Via Certified Mail and email at [jwbergosh@myescambia.com](mailto:jwbergosh@myescambia.com)**

Jeff Bergosh  
5905 Forest Ridge Circle  
Pensacola, Florida 32526

RE: Invoice, Use of Country Resources for Private Purposes

Mr. Bergosh,

Article VII, section 10 of the Florida Constitution provides that a county may not lend or use its taxing power or credit to aid any person. This provision of the Florida Constitution prohibits all counties from using taxpayer dollars in the County treasury to benefit a private person. This means that Escambia County's (the "County") taxing and spending powers must be limited to County public purposes. The determination of what constitutes a public purpose is initially made by the Escambia County Board of County Commissioners (the "Board"). But, this initial determination is not absolute. If that were the case the constitutional provision would be rendered meaningless.

And so, the people of the State of Florida, through the Florida Constitution, instilled in the Clerk and Comptroller (the "Clerk") certain duties. Relevant here is the Clerk's duties as the auditor of the County and as the custodian of all County funds. These functions, found in article VIII, section 1(d) of the Florida Constitution, are part of a system of checks and balances in county government.

As auditor, the Clerk has the responsibility of pre-auditing payments to determine the legality of an expenditure. The Clerk's legality determination involves a judgment call regarding whether taxpayer dollars are spent for a public purpose. If the Clerk determines, as auditor, that a payment does not serve a public purpose then payment cannot be made and a check cannot be drawn upon the County treasury for the proposed expenditure.

Late last year the County initiated an action for replevin and conversion against Gannett MHC Media, Inc. (as owner of the Pensacola News Journal) and two other private citizens. The property sought to be recovered was a copy of 60,000 lines of text messages from *your* personal cell phone. In November of 2023, less than two weeks after the action was initiated by the County, the Clerk's office inquired regarding whether the use of County resources to prosecute the action served a public purpose. In response to that, the County

largely refused to answer the substantive questions because there was ongoing litigation. In essence, the County stifled the Clerk's ability to complete a full pre-payment audit.

But now the state court action to recover your personal text messages has concluded and the presiding judge in the case determined that the County had no possessory interest in the text messages. *Escambia County v. Gannett MHC Media, Inc. et. al*, 2023 CC 006519 (Esc. Co. Ct. August 8, 2024). In other words, the County was using its resources to pursue the return of your private property. And if the County was using its resources to pursue the return of your private property, then that means the County was using its resources for the benefit of a private person. Consequently, it is now clear, through the final order in 2023 CC 006519, that public resources were expended by the County to pursue this action in violation of article VII, section 10 of the Florida Constitution.

In addition to the Clerk's pre-payment auditing duties, the Clerk may also audit transactions after they have taken place. Post payment audits verify the legality of payments that have been made. This duty is especially important where, as here, the County did not fully engage in discussions in November 2023 when the Clerk attempted to determine the legality of the proposed expenditures before payment. Despite the County's non-responsiveness, the presiding judge in *Escambia County v. Gannett MHC Media, Inc. et. al*, has provided sufficient factual findings and conclusions of law to now determine that the litigation did not serve a public purpose. Consequently, the total amount expended by the County related to work on *Escambia County v. Gannett MHC Media, Inc. et. al*, 2023 CC 006519 (Esc. Co. Ct.) must be paid back into the County treasury.

Attached to this letter is an invoice for the amount of \$39,670 that is due by you to the County treasury. I have previously asked for an accounting of the hours spent by the County Attorney's Office related to this action and absent a response a fair cost has been imputed to you for personal legal representation. The attached invoice is based upon the average amount of attorneys' fees expended by the defendants in defense of this action.

I expect this amount to be paid within 30 days of this correspondence.

Sincerely,



Pam Childers  
Escambia Clerk of Court & Comptroller



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## Clerk of Circuit Court & Comptroller

221 Palafox Place, Ste. 110

Pensacola, FL 32502

(850)-595-4826

## Use of County Attorney for Private Purpose

### Dates Of Active Litigation:

November 16, 2023 - August 8, 2024

### Invoice Date:

August 21, 2024

### Due Date:

30 days from date of Invoice

### Recipient:

Jeff Bergosh

5905 Forest Ridge Circle

Pensacola, Florida 32526



### Use of County Attorney Resources for Private Purpose

Imputed amount for use of County resources	\$39,670
<b>TOTAL AMOUNT DUE for Private Use of County Attorney Resources</b>	<b>\$39,670</b>

Remit payment and copy of invoice to: Honorable Pam Childers, Clerk of Circuit Court & Comptroller,  
221 Palafox Place, Ste 110, Pensacola , FL 32502