

Notes for the Meeting on 10/12/2021

Participants: Council Member W. Edwards and Acting City Clerk Michael Fluhr

Subject: Budget Adoption and Reason for Failure

The Acting City Clerk had contacted Council Members Bradford, Edwards and Walker. Mr. Bradford did not return the phone call nor responded to an email, Mrs. Walker declined a meeting with the City Clerk and Mr. Edwards agreed to meet in the City Clerks office.

At the beginning of the meeting, Council Member Edwards made clear that he is speaking only for himself and expressed deep concerns about the current situation in reference of a possible failure to adopt the 2021/2022 budget as well as the tension between council members and the Mayor.

Below are the main problem areas Council Member Edwards mentioned as the reason for him denying d the adoption of the budget on multiple attempts:

a) Communication between Council and Mayor

Mr Edwards is seeking for a commitment from the Mayor publicly (Council Meeting) to a better and more informative relationship to keep the Council more in the "loop" instead of just offering an "open door" to his office. That information flow should include emails, flyers, announcements and other engagements of major activities in the City.

b) Council input in compensation issues above the limitations regulated by the Employee Manual

Mr. Edwards is requesting an addition in the Employee Manual, which would require Council participation in cases of pay raises for employees (new and established) above the maximum allowance. This practice should be specifically used in the hiring process for employment of candidates in Department Head positions and higher. The involvement of the council should not be used or seen as interference or participation during the hiring process.

c) Pay raise for the HR Manager

Mr Edwards would approve a pay raise of \$ 3000 on the anniversary date of the employee, which would follow the current Employee Manual regulations (maximum 6 %). Furthermore Mr Edwards would commit to a Council review of the compensation for this specific position with the possibility to raise the starting salary at least to the level which was agreed between the

Mayor and the employee. Mr. Edwards acknowledges that the starting salary for the HR manager is not in accordance with current business standards.

Cc: Mayor Gardner
Council Member Edwards

110 Sibley Road
P.O. BOX 1498
Minden, Louisiana 71058

theyocomfirm@gmail.com



YOCOM LAW FIRM LLC
DON'T SETTLE FOR LESS

☎ 318.639.9070
📠 318.299.5254

idontsettleforless.com

October 13, 2021

Re: Legal Consequences if the City only provides a portion of the raise for the H.R. Director.

Dear Mr. Mayor,

You asked that I provide you with an opinion concerning any possible legal ramifications, if the City fail to provide the above referenced individual with the raise/bonus which she was promised at her initial hiring. In connection with this request, you provided me with "notes" from a meeting between the City Clerk and Councilman Edwards. Although I am quite pleased to see that there is an open-line of communication between the parties, I am afraid the suggested compromise under line item "C" does not change my opinion as reflected in my letter to you of September 9th.

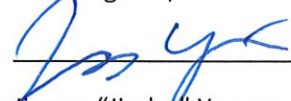
Relying on the memorandum, which you provided to me in connection with the prior request, as an accurate reflection of the agreement between the parties, it is my opinion that should the raise be denied, for whatever reason, the City could face possible litigation for breach of contract.

As I stated in greater detail in my prior letter, I believe the court would find that a contract exists between the City and Mrs. Agulard. In the event the court determine that a contractual relationship is present, the City's intentional breach of that agreement would likely put it in "bad faith." If the City is found to be in "bad faith," it would be liable for punitive damages, attorney's fees, and court costs. That is in addition to any lost income, pain -suffering, or possibly other damages that may be proven at a trial. Consequently, the legal exposure on the part of the city would be relatively significant. Moreover, the loss of an employee like Mrs. Agulard, would cause the vacancy of a much needed position at the City.

I do not offer an opinion as to the current situation with the adoption of the budget. Nor any opinion as to what the source of funds needed to satisfy this obligation should be. This opinion is limited to the issue of possible litigation and the existence of a contractual relationship between the City of Minden and Mrs. Agulard.

I hope this answers your questions. As always, should you or any other City official need any further information, please do not hesitate to reach out.

Kind Regards,



Jimmy "Jimbo" Yocom

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September 9, 2021

Re: Possible legal consequences of failure
to provide raises to Phillip Smart & April Agulard

Dear Mr. Mayor,

You asked that I provide you with an opinion concerning any possible legal ramifications, should the City fail to provide the above referenced individuals with the raises/bonuses which they were promised at their initial hiring. In connection with this request, you provided me with two (2) "Memorandums" that outline the agreement reached between yourself (in your position as Mayor) and the two employees. Relying on those memorandums as an accurate reflection of the agreement between the parties, it is my opinion that should said raises be denied, for whatever reason, the City could face possible litigation for breach of contract.

In reaching this conclusion, you must first determine if a "contract" does in fact exist between the City and the employees. Under Louisiana Law, a contract does not have to be signed by both parties, or even in writing. Basically, a contract is determined to exist so long as the following criteria are met: (1) the parties consent, (2) there is a lawful cause for the contract, and (3) the contract is for a lawful purpose. In order for the first criteria ("consent") to be satisfied, there must be an offer and an acceptance. Looking to the present circumstance, the question is if the City made an offer to these employees, and if said employees "accepted."

To the issue of "acceptance," it is apparent that they did accept the offer to work in their position for an agreed upon sum, as evidenced by their employment for the past year. Thus, the issue becomes did the City make an "offer" to provide them with the raises referenced in the provided memoranda, and did you as Mayor have the authority to make such an agreement

As Mayor, you act as the "CEO" for the City's business and thus you are an "Agent" for the City, and are tasked with conducting its day-to-day affairs and operations. Consequently, this responsibility includes hiring employees and performing any negotiations attached to their hiring. As an Agent of the City, the City is bound by the decisions and agreements which you enter into in your capacity as Mayor. Here,, both you and the parties agree that the agreement was clear and agreed upon. As such, it is my opinion that a "contract" does exist between the City and the employees and that any failure on the part of the City to satisfy the terms/conditions of that agreement would constitute breach of contract and likely result in costly litigation.

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I do not offer an opinion as to the current situation with the adoption of the budget. Nor any opinion as to what the source of funds needed to satisfy this obligation should be. This opinion is limited to the issue of possible litigation and the existence of a contractual relationship between the City of Minden and the two (2) referenced employees.

I hope this answers your questions. As always, should you or any other City official need any further information, please do not hesitate to reach out.

Kind Regards,

Jimmy "Jimbo" Yocom

Attorney for the City of Minden