CAVENDISH PARTNERS P.A.

LEGAL OPINION: SUPPLEMENT

TO THE CITY COUNCIL OF LAKE CITY, FLORIDA

PREPARED BY MICHAEL CAVENDISH, Esq. | April 15, 2025

I. Overview of Opinion

The legal opinion prepared by this office concerning Paul Dyal's separation from his employment with Lake City included the following findings:

- A Separation Agreement between the City and Mr. Dyal, in its final executed form, which included an agreement to pay him 16-weeks of salary, post-employment, was never presented to or voted approved by the City Council.
- While the City Council never exercised its authority to approve the 16-week payment, the payment was actually issued by the City Finance Department.
- Under the legal doctrine of *ultra vires*, this error renders the 16-week salary payment term in the Separation Agreement invalid, and void, unless the City Council's lack of approval is cured or ratified by new action by the Council approving the payment.

After the legal opinion was completed but before it was delivered to the City, the City Council enacted Resolution 2024-131 on November 4, 2024.

We have been asked to provide a further opinion, as a supplement to our delivered legal opinion, as to whether Resolution 2024-131 cured the *ultra vires* condition of the agreement within the Separation Agreement to pay Mr. Dyal 16 weeks of salary, post-employment.

II. Revisiting the City Code of Ordinances

In our delivered legal opinion, we described the following parts of the Lake City Code:

The Code vests with the City Council the power and authority to set the salary of a City officer or City employee. City Code Sec. 1-12(4).

Code Section 2-354, entitled "Budget amendment procedure," empowers the Finance Director of the City to spend monies that are re-allocated, e.g., that are available but not budgeted or planned for as to their usage, but not for the purpose of the payment of salary. City Code Sec. 2-354(e).

Because the City Finance Director is not empowered to reallocate funds to pay salary expenses, the remaining permissible method of using available annual budget funds to pay, in reallocation, an expense of salary, is to obtain a voted City Council resolution authorizing a reallocation to salary. City Code Sec. 2-354(g).

City Code Section 2-382, entitled "Procedure," pertains to the settlement or payment of employment claims against the City, and provides that any cash settlement of an employment claim exceeding $5,000 in value must be "approved by the [City Council]."

Finally, Section 2-354(f) of the City Code provision on budget procedure directs the City Finance Director and City Manager to, each quarter, report to the City Council any budget transfers or reappropriations they have made pursuant to 2-354(e) (which authorizes these officials to make non-salary and non-capex budget reallocations, administratively).

III. Revisiting the Employment Agreement Between Mr. Dyal and the City

In our delivered legal opinion, we found that from a legal construction of Section 7 and Section 8 of the Employment Agreement between the City and Mr. Dyal, there was not an indication that the City, at the time that Dyal's hiring and contract terms were voted approved by the City Council, agreed to pay Mr. Dyal a 16-weeks salary payment, post-employment, if his employment separation was caused by his voluntary resignation.

We also found that as a matter of the City's Code, the City Council had the authority to, taking up the matter in a meeting and putting it to a vote as part of its legislative process, approve such a payment of 16 weeks of salary, post-employment. Were the Council to do

so, and were the Council to vote approval of such payment, it would be a legislative act setting or creating an item of executive compensation beyond what was strictly agreed to in the Employment Agreement. And, because the Separation Agreement included 'release of claims' terms, it would also be a legislative act settling an employment claim by obtaining a release and waiver from the employee of 'any' possible claims.

We also found, as a matter of fact, that the Separation Agreement was not presented to the City Council or approved by a vote of Council, before it was executed and before the 16-week post-employment sum was paid to Mr. Dyal.

IV. Defining the Question: Whether a Retroactive Approval Has Occurred

The City's further question in need of legal opinion is, was Resolution 2024-131 a retroactive approval of the 16-week sum paid to Mr. Dyal, post-employment, and an approval of the Separation Agreement that included the payment and a 'release of claims' as contract terms?

V. Relevant Facts Concerning Resolution 2024-131

Within the State of Florida's uniform regulation of municipal finances, the statute that requires certain notices of annual budgets and amendments to annual budgets is Section 166.241, Florida Statutes.

Subsection (8) of Section 166.241 sets forth the procedural requirements for establishing an increased or decreased appropriation that will amend a City's previously announced annual budget. Because the Dyal post-employment payment was not, as our delivered opinion found, budgeted for in the City's annual budget, and because of the provisions of the City Code that require voted approval of budget changes paid as salary, or as employment claims releases with payments exceeding $5,000, subsection 8(c) of Section 166.241 applies, and directs that a budget amendment must be adopted in the same manner as the budget itself was.

Subsection (9) of Section 166.241 requires that notice of an adopted budget amendment be posted on a City's public website within five (5) days after the date of adoption.

The minutes of the City Council meeting of November 4, 2024 state that Resolution 2024-131 was presented as a 'consent agenda' item. The Resolution was approved on the consent agenda, along with the approval of old Council meeting minutes, by a motion, and second, and a voice vote, with the minutes reflecting no discussion of any of the Resolution's contents.

The portion of Resolution 2024-131 that pertains to the Dyal separation of employment matter is the first entry on the Resolution's attached Exhibit A. This first item states in full:

GENERAL FUND - 001

TO	001.02.512-010.12	Personnel Services Salary	$	114,500.00
FROM	001.15.541-010.12	Personnel Services Salary	$	114,500.00

CM severance payout was not budgeted. It was paid due to signed appendix A of the contract.

Our questions presented to City staff familiar with the presentment of the Resolution suggest that the bold text at the bottom of the item was added to the Resolution's Exhibit by the City Finance Department.

In preparing this supplement to our delivered legal opinion, we look at the nature of Resolution 2024-131 as a whole record, and at the nature of the bold text from this Exhibit A line entry, as a particular item of language.

The nature of Resolution 2024-131 as whole

Florida statutory law authorizes local governments to enact legislative items of law as "ordinances" and as "resolutions." Fla. Stat. § 166.041(1)(a)+(b).

A baseline requirement within Florida's statutory authorization of local ordinances and resolutions is what is called the 'single subject rule.' According to Section 166.041(2), Florida Statutes, the legal requirement for validity is that "each ordinance or resolution shall be introduced in writing and shall embrace but one subject and matters properly connected therewith." Fla. Stat. § 166.041(2).

The single subject rule requires that in analyzing Resolution 2024-131 to determine the Council's legislative intent in enacting it, for the Resolution to be valid, it must be construed as adhering to one subject only.

On the face of the Resolution, that single subject is the City's annual budget. While the Exhibit A attached to the Resolution reports a list of varied expenditures, with an identifying explanation of what each expenditure is, the intent of the Resolution and its subject is to acknowledge changes from the planned budget that various contingencies caused the City to make expenditures towards.

And if, as seems necessary, the single subject is the budget, it cannot also be a substantive examination of, agreement upon, the making of new or revised findings about, or the retroactive ratification of, any of the contingencies or conditions that underly the reported line entries on its Exhibit A, including the line entry about the Dyal payment excerpted above.

If the line entry concerning the Dyal payment excerpted above were proposed as the subject of this Resolution, such that the proposer might suggest that the intent and purpose of the Resolution was to retroactively authorize, accept, ratify, or approve the payment of 16 weeks of salary to Dyal, post-employment, then the entire Resolution would very likely be pushed into invalidity, due to a violation of the single subject rule, since another subject of the Resolution would be, inescapably, the City's overall annual budget.

As an aside, the same Florida statutory framework that governs what an ordinance or resolution can do or not do also requires certain notices to the public. Municipal budget amendment laws are required to be posted to a city's public website within five (5) days of passage. Fla. Stat. §166.241(9). Our questions presented to City staff familiar with the presentment of the Resolution suggest that Resolution 2024-131 *was not* posted on the City's website after passage, as Section 166.241(9), Florida Statutes, directs. We are advised that Resolution 2024-131 was first posted on the City's website on April 2, 2025.

The nature of the bold text contained in the Exhibit A line entry concerning the Dyal payment

Our delivered legal opinion acknowledged that the Separation Agreement included text at its top that styled it as a "Appendix" to the Employment Agreement, but also implicitly found that, because the executed Separation Agreement contained a difference in material terms (as to the matter of payment after a voluntary resignation) from the same portion of a draft, unexecuted version of the same contract form that was included in the Council meeting agenda packet on the date of Dyal's hiring, a court reviewing the matter would likely reject the label of "appendix," a term which connotes an exhibit that two parties attach or append to an executed contract and which is not thereafter modified, and would instead view the Separation Agreement as a freestanding agreement executed 10 months after the Employment Agreement, and containing at least one materially different contract term from prior circulated drafts.

With this in mind, viewing the bold text included in the Dyal budget amendment item shown above, there are two reasonable interpretations of the intent of the language, as it was presented to Council as a consent agenda item showing proposed budget re-allocations prepared for compliance with Section 166.241 (giving public notice of amended city budgets).

The first reasonable interpretation is that the language is the Finance Department reporting to the Council that

> *[City Manager's] severance payout was not budgeted. It was paid [by the Finance Department][because we believed that] signed Appendix A of the contract required it.*

This interpretation would be consistent with the Finance Department's role at Section 2-354(f) of the City Code provision on budget amendments, discussed above, to report to Council quarterly on reallocated budget monies.

The second reasonable interpretation is that the language is the Finance Department suggesting to Council a factual and legal conclusion as to what the Separation Agreement required the City to do, which is pay a certain sum to Mr. Dyal, post-employment.

However, when each of these two reasonable interpretations is viewed against the backdrop of the nature of the Resolution as a whole, and the requirement that it adhere to the statewide single subject rule, then only the first interpretation remains reasonable, a report of detail on a line item forming part of a changed annual budget expenditure.

VI. The Florida Supreme Court's *Frankenmuth* Opinion, and the Law of Retroactive Approvals of Contracts

In legal, contractual terms, the common law word for the retroactive approval of an existing, executed contract in way that renders the approver bound to the existing contract in some way is *ratification.*

The Florida Supreme Court opinion in *Frankenmuth v. Magaha*, 765 So. 2d 1012 (Fla. 2000) offers authoritative guidance as to under what circumstances action by a local government council or commission amounts to a ratification of a previously-executed written contract.

The Florida Supreme Court's guidance in *Frankenmuth* boils down to this; for a body like the City Council of Lake City, Florida to ratify a previously executed but never approved contract, two conditions must be present, (1) the authority to make and approve the contract in the first place must exist, and (2) the approval must be done in the same manner as formal authorization or approval would have occurred had the initial oversight or absence of approval never existed. *Frankenmuth*, 769 So. 2d at 1022-23.

VII. Conclusion: Applying the Law to the Facts About the Resolution

We have already seen that the single subject rule counsels that, to ensure compliance and the validity of an ordinance or resolution on the matter, the Council would likely have considered the Dyal payment as a standalone item. This indication speaks to the first part of the *Frankenmuth* test; how would the Council have considered the matter in a valid exercise of authority?

As to Resolution 2024-131, the second part of the *Frankenmuth* test asks "would the City Council consider and approve, possibly for the first time in recent memory, a payment of 16 weeks worth of severance pay to a voluntarily-resigning City executive, by placing the matter as a line item within a larger group of line items in a budget amendment resolution, or, would the Council have considered the matter as a standalone item?"

Looking at factors such as the precedential nature of the matter of paying severance against voluntary resignations, the sum of money involved, and the need to satisfy the Code-driven approval of a payment that is tied to contract language that settles any employment claims between Mr. Dyal and the City (the release language in the Separation Agreement), the probability that the Council would have, and would have needed to, consider the matter on a standalone basis, seems to only increase.

A review of the City Council's published meeting agendas during a sample period of 2022-2024 suggests to us that the presentment of a resolution proposing to retroactively approve the 16-week payment to Mr. Dyal and the related aspects of the Separation Agreement would not have been placed on a consent agenda, but would have been placed within "New Business / Resolutions" in a manner similar to this sample excerpt taken from the Council's May 1, 2023 meeting agenda:

New Business

Ordinances - None

Resolutions

7. City Council Resolution No. 2023-047 - A resolution of the City Council of the City of Lake City, Florida, authorizing the execution of Task Assignment Number Seven to the continuing contract with North Florida Professional Services, Inc., providing for engineering services related to the resurfacing of SW Grandview Street; providing for a payment for the professional services at a cost not to exceed $72,900.00; and providing an effective date.

8. City Council Resolution No. 2023-048 - A resolution of the City Council of the City of Lake City, Florida, authorizing the execution and submission of the application for Federal Assistance for FY 2023 NP Entitlement Grant

The City Council, in other words, within its regular legislative operation, typically considers the matter of an approval of a contract as a freestanding resolution, as "new business," and as the part of the meeting agenda that features discussion, deliberation, and comment.

We cannot foreclose the possibility that some argument can be made that Resolution 2024-131 was intended by the City Council to be a single subject-compliant group approval of all exhibited line entries on its attached Exhibit A.

However, given the answers to the questions asked by second part of the *Frankenmuth* test (how would Council have done it, had it done it, had the matter not been overlooked, the first time around?), discussed above, and given that construction of an item of passed legislation is to be done in a manner that keeps the item as lawful, valid, and constitutional, while adhering to the plain meaning of what the statute states that it is doing, in plain language, see *Stroemel v. Columbia County*, 930 So. 2d 742, 745-46 (Fla. 1st DCA 2006), we anticipate that a court reviewing the Resolution would decide that:

1) 2024-131 was an ordinary budget amendment resolution that reported changing budget numbers as public facts, and that

2) as to the Dyal payment line entry on the Exhibit A, 2024-131 reported the fact that there was a sum of $114,500 that was not budgeted but that was paid to Mr. Dyal, but that

3) 2024-131 was not an attempt to engage, and was not successful at engaging, with the intent or formality the second part of the *Frankenmuth* test looks for, the matter of whether the same $114,500 payment to Mr. Dyal was approved, retroactively, i.e., *ratified*, as a post-employment severance payment to a voluntarily-resigning employee.

The fact that 2024-131 was not posted on the City's website as the Florida statute on budget amendments requires, in our view, creates additional grounds that would tend to push a court's view of the Resolution towards existing as an action by Council that stopped short becoming an effective act of ratification.

In conclusion then, as a supplement to our delivered legal opinion on the matter of the separation of employment of Mr. Dyal, we are of the opinion that a reviewing court *would not* find that Resolution 2024-131 created a retroactive approval of, or ratified, the 16-week sum paid to Mr. Dyal, post-employment, or the Separation Agreement that included the payment and a 'release of claims' as contract terms.

[END]