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January 11, 2021

Via email at nmimms@cityoffortpierce.com

Mr. Nicholas Mimms, P.E.
City Manager
City of Fort Pierce
Post Office Box 1480
Fort Pierce, Florida 34954

Re: Reimbursement of Mr. Sessions' legal expense

Dear Mr. Mimms:

You have asked me to review the issue of reimbursing attorneys' fees and expenses incurred by Reginald Sessions, while a City Commissioner, in relation to an ethics complaint which has been dismissed.

You provided the following:

1. Mr. Sessions' Ethics Complaint Statement
2. His travel expense statement
3. His attorney's ledger report
4. The Complaint
5. The Order to Investigate
6. The Report of Investigation
7. The Advocate's Recommendation
8. The Response of Mr. Sessions' Attorney
9. The Ethics Commissions' Public Report

I've reviewed that material, including the Public Report determining no probable cause on the complaint.

I have also conferred with General Counsel for the Florida Commission on Ethics and offered Mr. Sessions and his counsel an opportunity to comment.

My understanding is that the City of Fort Pierce does not have any written policy or code provision directly addressing reimbursement of legal expense in this situation; and, while there is a State statute providing for defense of civil actions against public officials, there is not one directly addressing reimbursement of expenses incurred in responding to an ethics complaint.

The Courts in Florida have, however, clearly recognized that officials have the right to reimbursement, independent of any statute, for legal expense incurred in successfully defending claims of malfeasance in office.

As stated by the Attorney General's Office:

Florida courts have recognized a common law right of public officials to legal representation at public expense to defend themselves against litigation arising from the performance of their official duties while serving a public purpose. The purpose of this rule is to avoid the "chilling effect" that a denial of representation might have on a public official in performing his duties properly and diligently. Such an obligation arises independent of statute, ordinance or charter and "is not subject to the discretion of the keepers of [the] City coffers".

Ops. Att'y Gen. Fla. 98-12.

This is a right which has been extended to successful defense of ethics complaints. See, *Maloy v. Board of County Commissioners of Leon County*, 946 So.2d 1260 (Fla. 1st DCA), *rev. den.*, 962 So.2d 337 (Fla. 2007); *Ellison v. Reid*, 397 So.2d 352 (Fla. 1st DCA 1981); and *Ops. Att'y Gen. Fla. 90-74* (1990).

So, if the City Commission concludes on the facts presented that Mr. Sessions incurred legal expense in successfully defending himself against ethic's complaints arising from the performance of his official duties while serving a public purpose, Mr. Sessions is entitled to reimbursement of that cost.

The Courts do recognize that a public purpose is served by defending an unfounded complaint or action, because, "the public has an overriding interest in ensuring the effective and efficient functioning of its governing body", *Thornber v. City of Fort Walton Beach*, 568 So.2d 914, 917 (Fla. 1990), and, "[i]f a public officer is charged with misconduct while performing his official duties and while serving a public purpose, the public has a primary interest in such a controversy and should pay the reasonable and necessary legal fees incurred by the public officer in successfully defending against unfounded allegations of official misconduct". *Ellison, supra*, at 354.

Here, I understand that the complaint arose out of Mr. Sessions voting on certain matters; and, the alleged voting conflict was found not to exist. Voting is clearly a part of a City Commissioner's duties and serves a public purpose; so, defense of this complaint would be deemed to serve a public purpose and reasonable legal expense would be reimbursable.

In this case, Mr. Sessions provided documentation indicating that attorney, Mark Herron,

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charged him \$1,530.00 for appearance and defense of the matter. The itemization does not describe the services, but it breaks down the time and charges; and, the amount seems reasonable. So, I can recommend reimbursing that expense.

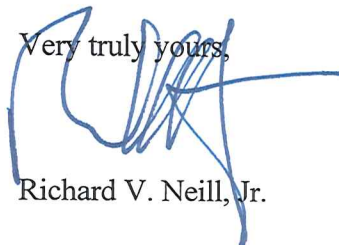
Mr. Sessions' submittal includes additional expenses, which I gather relate to his own time and expenses. I don't see any legal authority stating that an official who successfully defends against an ethics complaint is entitled to reimbursement for his own time expended in that effort. Nor do I see authority for paying an official, who is an attorney, for the time lost from his practice or from the office, as a result of an ethics complaint.

There could be an argument for paying Mr. Sessions for his time as an attorney if he was representing himself, but that doesn't seem to be the case here; so, based on the facts presented, neither his time, which is described as travel time, nor his travel expenses would be part of the legal defense for which the law supports reimbursement.

That said, based on the legal principle that successful defense of an ethics complaint is public business, it would be appropriate to treat any travel, mileage and/or per diem expense as if Mr. Sessions had travelled for any other City business, applying the same rules and regulations to this travel mileage, expense and/or per diem as would otherwise be applied when he traveled on public business.

Thank you for the opportunity to work with the City on this matter. Our statement for services is attached.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Richard V. Neill, Jr.", with a long horizontal line extending to the right.

Richard V. Neill, Jr.

Enclosure
RVNjr/lam