

**IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS**

CITY OF SILVIS, an Illinois municipal)
corporation, MATT CARTER, in his official)
capacity as Mayor of the City of Silvis, Illinois,)
and AMY MALMSTROM, in her capacity as)
City Clerk of the City of Silvis, Illinois.)

Plaintiffs,)

v.)

ALLISON WRIGHT AND PAPPAS WRIGHT,)
P.C.)

Defendants.)

No. 2023CH7

**DEFENDANTS' RESPONSE IN OPPOSITION
TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

NOW COME Defendants, Allison Wright and the law firm of Pappas Wright, P.C., and for their response in opposition to Plaintiffs' motion for temporary restraining order, state as follows:

I. INTRODUCTION

This lawsuit is an assault on the Defendants and their known ethical obligations. An attorney owes ethical obligations to both current and former clients. The termination of a relationship does not allow an attorney to abandon its obligations to a client nor is an attorney allowed to ignore information it is provided in the course of representation that may expose a risk of ethical violations. Plaintiffs' Motion for a TRO, while without merit and warranting a denial in its entirety, is demanding this Court to order Defendants turn over client information to an attorney/firm that City Council members believe has a conflict of interest due to their representation of the Mayor individually on matters arising out of complaints against him. The conflict, as described in more detail below, was not based only on this attorney's express

statements that she represented the Mayor. In fact, City Council members feel that after Mayor Carter purported to use his temporary appointment power¹ to appoint the attorney who just earlier that week stated she represented him personally, they were given legal advice which misrepresented their rights as Council members and rights with regard to access to legal representation. The City Council took immediate steps to create alternative avenues to get access to fair representation by passing new ordinances on February 23, 2023. However, even those efforts were met with resistance and misrepresentations.

The Defendants are not in the business of suing clients to force them into a contractual relationship with them. The Defendants are further not in the business of ignoring conflicts and directives in the provision of legal services. It is clear that the instant Motion and its corresponding complaint are frivolous efforts to disparage, embarrass, intimidate and harass Defendants. Defendant Wright must expressly condemn the efforts made to include her personal home address in the underlying complaint, with absolutely no factual or other basis or need to do so. Pleading the county of residence is certainly sufficient. Further, the lawsuit with Defendant's home address shown has been plastered on the news along with corresponding remarks from Plaintiffs. Defendants find the defamatory remarks and use of home addresses in the complaint harassing and repugnant. In a review of several other TRO motions and complaints filed by Ancel Glink, Defendants were unable to locate a single pleading that included the personal home address of any named Defendant. "A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others." The inclusion of Defendant's address in this case serves absolutely no basis except to harass and intimidate and Defendants would ask that

¹ Defendants do not contest that the Mayor has the authority to appoint a temporary successor to the City Attorney upon his true abandonment of duties. However, this appointment power does not invalidate or override conflicts of interest under Illinois law. As such, Defendants are presented with a demand to ignore conflict principles.

the Court strike the same from the Complaint and order Plaintiffs to cease any further efforts of this nature.

II. FACTUAL BACKGROUND

This lawsuit ignores and omits the reality that the City of Silvis faces at this point in time. The information contained herein has been shared publicly via various platforms and open meetings. In accordance with that, the following factual background is presented so the Court may fully understand the concerns and position of the Defendants.

On October 18, 2022, a City employee filed an internal harassment complaint against another City employee, which resulted in an investigation. The City directed Allison Wright to assist with the investigation. Ultimately, the allegations were found to have merit and the accused employee was thereafter terminated by the City. His termination was ultimately upheld by a unanimous vote of the City Council. Over the course of the next several months, there were allegations from City employees alleging they were subjected to harassment and retaliation by the Mayor for their involvement in the investigation. (See Affidavits of Alderman Lohse, Alderman Dyer and Alderman Trulson, attached hereto as Exhibits K-M). These allegations were brought to the Mayor's attention. Allegations then claimed things got worse. After such escalation, the City Council voted to go into closed session at its February 7, 2023 meeting. An alderman then requested that the Mayor and the Clerk excuse themselves from the conversations since the allegations involved both of them. They left without objection. Two attorneys for the City were present during the closed session discussion to advise the Council, Nick Mason and Defendant Wright. (See Affidavits of Alderman Lohse, Alderman Dyer and Alderman Trulson, attached hereto as Exhibits K-M).

During closed session, the City Council discussed the allegations, the recent developments and concerns that a claim against the City was probable or imminent. In the days leading up to the February 7th meeting, reports regarding fear to be at work had escalated. There were reports that individuals intended to retain legal counsel and file claims against the City as a result of the allegations involving the Mayor and the Clerk. A full recording of closed session was kept in accordance with the Open Meetings Act.

At the end of the February 7, 2023 closed session, the alderpersons determined their next step was to send a letter to the Mayor and call for his resignation. On February 10, 2023, attorney Keri Krafthefer called former City Attorney Nick Mason and notified his secretary and then Mr. Mason that she represents Mayor Matt Carter. She then went on to discuss various matters, including suggesting that a specific employee should be disciplined. Ms. Krafthefer then called the law firm of Pappas Wright, P.C. and left a message stating that she was calling because she represents Mayor Matt Carter. Ms. Wright called her back but they did not speak on February 10, 2023. (See Affidavit of Allison Wright, attached hereto as Exhibit N)

On Monday February 13, 2023, Ms. Wright again called Ms. Krafthefer. Later that day, Ms. Wright and Ms. Krafthefer spoke by phone and during that call, Ms. Krafthefer told Ms. Wright that she represented Mayor Matt Carter and went on to discuss various matters. During that call, Ms. Krafthefer also shared an opinion about specific employees, suggesting one needed to be “put in [their] place” and arguing on behalf of the Mayor’s position. Specifically, she stated the Mayor should have access to the February 7, 2023 closed session audio recording. During this phone call, Ms. Wright shared that the February 7, 2023 closed session discussion involved threatened litigation and involved allegations against the Mayor and also involved the Clerk. Ms. Krafthefer stated that any claims against the Mayor were frivolous and that it was her opinion

there was no threatened litigation. Ms. Wright responded that the Mayor was aware of the nature of the allegations and that based upon information provided to City Council in the days leading up to the February 7, 2023 meeting, it was clear that litigation was imminent.² (See Exhibit N)

The following day, February 14, 2023, the letter requesting Mayor Carter's resignation, signed by all eight (8) alderpersons, was delivered by Alderman Joshua Dyer to Mayor Matt Carter at City Hall in the morning. (Exhibit K) During that exchange, Mayor Carter remarked that he "could have" disciplined a particular employee involved in the underlying complaints. (Exhibit K) Later that same day, Mayor Carter sent a letter to Allison Wright stating he was terminating her legal services. (Exhibit B to Complaint)

On February 15, 2023, the Mayor then sent a letter entitled "Letter to Council on legal advice" which included a case attachment. The case was Village of Westmont v. Lenihan and had been provided by Attorney Keri Krafthefer (as evidenced by her name at the bottom middle of every page). (Please see Exhibit B) The letter further stated that the Mayor had reassigned all the City's labor work to the City Attorney, Nick Mason. A few hours later, Alderman Joshua Dyer sent an email to Ms. Wright, copying Nevada Lemke (City Administrator), Amy Malmstrom (City Clerk), Matt Carter (Mayor) and Mark VanKlaveren (Chief of Police), stating the Mayor does not have the authority to terminate her since she was retained by the City Council and stating she should disregard the Mayor's letter in its entirety. (See Exhibit C) On February 15, 2023, Nick Mason (acting City Attorney on that date) called Allison Wright and shared his opinion that the letter sent from the Mayor had no legal effect. (Exhibit N) That same day, the City Clerk was asked to place a vote of no confidence in the

² Since that time, the issues discussed during closed session did result in complaints being filed as acknowledged by Rock Island County State's Attorney Dora Villareal.

Mayor on the agenda for the February 21, 2023 regular meeting. The City Clerk did not place the item on the agenda for the regular meeting. (Exhibit K)

On February 16, 2023, Nick Mason met with Mayor Carter at or around 7:15 AM. Immediately after his meeting with the Mayor, Nick Mason resigned as City Attorney. Later that day, Mayor Carter then appointed the attorney he had retained, Keri Krafthefer and her firm, Ancel Glink, as the temporary City Attorney. Ms. Krafthefer then sent an introductory letter to the City Council identifying herself as the new acting City Attorney. (Exhibit D) In response that same day, Alderman Joshua Dyer emailed Ms. Krafthefer and stated, in part, that Ms. Krafthefer had previously stated she was representing Mayor Matt Carter personally and she was therefore not eligible to represent the City. He finished his email by stating, “Please refrain from further representing that you are an attorney for the City of Silvis.” (See Exhibit E)

On Sunday, February 18, 2023, Keri Krafthefer emailed all City Council members and stated the following, in part:

- She was the acting City Attorney.
- Mayor Carter had the authority to direct Ms. Wright to perform no further legal work.
- The City Code states the City’s legal work is to be performed by the City Attorney.
- “An entire body of law” provides that the Mayor directs the City’s legal work and appoints City Officer.
- There was no Council vote required to terminate Ms. Wright.
- “The City Clerk has reviewed the City Council minutes since 2016 and there is no record that the City Council ever voted to hire the labor attorney or voted to award a contract to Ms. Wright or her firm.”

- The Lenihan case sent to the Alderpersons on Friday (2/17/23) holds “that the City Council cannot employ any attorneys to represent the City or to handle the City’s legal work without the agreement of the Mayor.”
- **“The City Council cannot hire a lawyer to represent the City without the Mayor’s approval.”**

See Exhibit F.

Several aldermen were concerned with Ms. Krafthefer’s communication for various reasons, including but not limited to, the fact that it stated City Council cannot hire any attorneys without the Mayor’s approval. (Exhibits K-M) Several aldermen felt this advice was misrepresenting legal rights of City Council. Later that afternoon, Alderman Joshua Dyer, Alderman Richard Lohse and Alderman Anthony Trulson directed the City Clerk to post notice of a special meeting duly called by them for 5:30 PM on Tuesday, February 21, 2023. The purpose of the meeting was to discuss an ordinance on Legislative Counsel, which provided yet another mechanism for the City Council members to hire an attorney. The aldermen were aware that Ms. Krafthefer serves as legislative counsel to municipalities or villages in the State of Illinois and were also aware of a 2017 case where Ms. Krafthefer argued that the City Council had the right to retain attorneys without approval from the Mayor. (Exhibit K-M) That was the holding of that case. *Jones v. Brown-Marino*, 77 N.E.2d 701 (Ill. App. 2017).

The Clerk did not respond to the request to post a special meeting on February 19, 2023. As such, the City Administrator was directed to post notice and she thereafter did. On the day the meeting was to be held, Ms. Krafthefer sent an email to the City Council cancelling the meeting claiming it was not timely posted. (See Exhibit G)) Specifically, it was stated that Mayor Carter reviewed video surveillance in City Hall and he claimed the City Administrator

posted notice two minutes late. The City Clerk then removed notice of the meeting from the City's website. Neither Ms. Krafthefer nor the Clerk conferred with the aldermen who called the meeting prior to sending out notice that it was cancelled. The purpose of the special meeting was to discuss legislative counsel as an additional option so aldermen could discuss their concerns over Ms. Krafthefer's conflict with the City and discuss access to legal representation. Alderman Joshua Dyer objected to the cancellation and directed that the notice be re-posted to the website, further stating that the City Council would hold the meeting no earlier than 48-hours after posting. Ultimately, over this objection, the meeting was postponed after Ms. Krafthefer emailed regarding cancellation and the City Clerk removed the notice posted from the website and sent out a cancellation notice. (Exhibit K)

On Tuesday, February 21, 2023 the City Council held a meeting. During that meeting, several members of the public spoke during public comment. Among them was an employee who identified himself as the complainant who filed a harassment complaint on October 18, 2022, and as he shared, the complaint ultimately was found to have merit and resulted in the termination of another employee. The complainant-employee thanked the City Council for addressing the complaint and stated his opinion about the positive impact it has had on the work environment. A union representative who does not work for the City also spoke. Over the course of the last several months, the City received complaints about this representative alleging she refused to represent the complainant-employee and mistreated him as a result of his harassment complaint against another member. Over the course of the last several months, concerns were also raised with the City regarding the Mayor's conduct following the harassment complaint. During the February 21, 2023 City Council meeting, the union representative accused of retaliating against the complainant-employee thanked Mayor Carter in open session for

sending the termination letter regarding Defendant Wright. Several council members were deeply concerned by the union representative's acknowledgement that Mayor Carter had terminated Ms. Wright because of the underlying harassment complaint, of which she was asked to investigate and advise on. (Exhibit K-M)

On the Mayor's personal Facebook account, his post made just days before the meeting stated the City Council's vote of no confidence against the Mayor was related to the harassment complaint, which resulted in the termination of the respondent-employee. (See Exhibit I, Facebook post of Mayor Matt Carter on 2/18/23 stating the vote was based on him "disagreeing with the city council for termination of a longtime employee...") Notably, the alleged harassment was not disputed by the respondent-employee. A motion for a vote of no confidence against the Mayor was passed on February 21, 2023 by the City Council.

On February 23, 2023, the City Council held another special meeting for the purpose of discussing the City's access to attorneys. During that meeting, objection was again made against Ms. Krafthefer as temporary City Attorney on the basis that she had a conflict of interest. During that meeting, the City Council also discussed concerns that they had been told the City Council could not retain any attorney without approval of the Mayor, despite Ms. Krafthefer's later acknowledgement that they could. Ultimately, the City Council voted unanimously to approve another ordinance allowing the City Council to retain legislative counsel and special counsel. (Exhibits K-M) Several City Council members felt Ms. Krafthefer's representations to them were intended to manipulate them into believing that they had no other legal options but to take advice from her and her firm, despite their objection that she has a conflict in advising the City due to her acknowledged representation of the Mayor and persistent attempts to further his individual interests. (Exhibits K-M)

On February 22, 2023 the instant lawsuit was filed. Despite having all contact information, including email addresses for Defendants, Plaintiffs did not notify Defendants of the lawsuit that day. Instead, Defendants were notified by Channel 4 news that Plaintiffs had filed the instant complaint. Despite Plaintiffs' representations of urgency in this Emergency Motion for a TRO, Defendants received no communication from Plaintiffs' counsel the day it was filed. Further, the City of Silvis City Council was not notified of the lawsuit at any time by Plaintiffs' lawyers. As attested, Council members were made aware of its filing after the suit had already been filed. (Exhibits K-M)

III. LAW & ARGUMENT

a. Standard for Temporary Restraining Order

A temporary restraining order ("TRO") is a drastic, emergency remedy which may be issued only in exceptional circumstances and for a brief duration. *Jurco v. Stewart*, 110 Ill. App. 3d 405, 408, 442 N.E.2d 633, 635 (1st Dist. 1982) (internal citations omitted) A trial court should not enter a TRO unless it finds the order necessary to prevent immediate and irreparable harm to the party seeking the order. *Diamond Savings & Loan Co. v. Royal Glen Condominium Ass'n*, 173 Ill.App.3d 431, 434, 122 Ill.Dec. 113, 526 N.E.2d 372, 375 (2d Dist. 1988) The purpose of a TRO is to preserve the status quo pending a hearing on a preliminary injunction. *Id.* To be entitled to temporary injunctive relief, Plaintiffs must demonstrate they: (1) possess a protectable right; (2) will suffer irreparable harm without the protection of an injunction; (3) have no adequate remedy as law; and (4) are likely to be successful on the merits of their action. *American Federation of State, County, and Mun. Employees, Council 31 v. Ryan*, 332 Ill.App.3d 965, 966-67 (1st Dist. 2002) The failure to establish any one of these elements is sufficient basis to deny a request for a TRO. *Abbinanti v. Presence Central and Suburban Hospitals Network*,

2021 IL App (2d) 210763, ¶15, 191 N.E.2d 1265, 1271 (2d Dist. 2021). The granting or denial of a TRO is within the sound discretion of the trial court. *Stocker Hinge Mfg. Co. v. Darnel Industries, Inc.*, 94 Ill.2d 535, 541 (1983)

As set forth below, Plaintiffs cannot demonstrate (a) they possess a protectable right to prevent Defendants from providing legal services to the City or its individually elected and appointed officials and staff in response to requests from the City Council and staff; (b) that Plaintiffs will suffer irreparable injury absent the entry of a temporary restraining order; or (c) that they are likely to be successful on the merits of their action. Further, Defendants are not in possession of the February 7, 2023 closed session meeting audio recording – as such audio recording was provided to one of the City’s aldermen on February 21, 2023, before the instant litigation was ever filed. Finally, the essential purpose of a temporary restraining order – to maintain the status quo until a more complete hearing may be held, would not be advanced by granting Plaintiffs’ request for injunctive relief. Accordingly, Plaintiffs’ motion for temporary restraining order should be denied.

b. Ancel Glink’s Conflict of Interest and Defendants’ Ethical Obligations to the City of Silvis

Except in certain limited circumstances which do not exist in the present case, attorneys are prohibited from representing a client if such representation involves a concurrent conflict of interest. Specifically, Rule 1.7 of the Illinois Rules of Professional Conduct provides: Rule 1.7: Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent.

See, Ill. R. Prof'l Conduct R. 1.7 (eff. Jan. 1, 2010)

Defendants, for the reasons stated hereafter, dispute Plaintiffs' contention that Defendants were not approved by the City Council. Even *assuming arguendo*, for purposes of this section only, that Defendants' attorney-client relationship with the City had been terminated, such termination would not eliminate Defendants' ethical obligations towards the City of Silvis. In any such situation, "a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule." Ill. R. Prof'l Conduct. R. 1.9. Defendants submit to this Court that the instant lawsuit asks Defendants to abandon the interests of the City and ignore conflicts of interest.

Mayor Carter's appointment of Ms. Krafthefer and the law firm of Ancel Glink as temporary successor City Attorney for the City of Silvis has placed the City – and specifically City Council – in a position of being forced to utilize legal counsel who previously represented Matt Carter in connection with allegations being made against him and Carter's desire to obtain an audio recording of City Council's February 7, 2023 closed session meeting. That meeting, as

described herein and in the attached affidavits of City aldermen Josh Dyer and Rick Lohse, was held by council, in pertinent part, to discuss allegations against the Mayor and also involving the Clerk. In the week following the closed session discussion, Ms. Krafthefer contacted the then acting City Attorney, Nick Mason, and Defendant Wright and expressly identified herself as representing the Mayor and argued positions on his behalf. She further shared opinions about City employees and them needing to be “put in their place.” Ms. Krafthefer referenced having information from the Mayor regarding allegations against him and shared her opinion that the claims were frivolous. It is clear by the filing of this lawsuit that the representations have continued down the same path and Defendants have been notified of concerns for conflict from City Council members. Those concerns have been publicly identified.

It is further clear from the facts and circumstances immediately preceding Ms. Krafthefer’s appointment to the City Attorney position as well as those immediately following the appointment as detailed further in the affidavits attached to Defendants response, there exists a concurrent conflict of interest with regard to Ancel Glink’s continued provision of legal services as acting City Attorney for the City of Silvis. Ms. Krafthefer was retained directly by Matt Carter to assist him individually with his demand for the 2/7/23 closed session audio. Since that time, and over the objection of members of City Council due to the conflict of interest, Ms. Krafthefer has seemingly continued to serve as an advocate to Mayor Carter, to the detriment of City Council, the City and its employees. The advice provided by Ms. Krafthefer following her appointment, and the corresponding actions of Mayor Carter and the City Clerk since such appointment, demonstrate Ancel Glink is plainly beholden to the individual interests of Mayor Carter and serving such interests pose a conflict to the organization as the client.

Additionally, Defendants have ethical obligations to the City of Silvis, having provided legal services to the City for nearly seven (7) years and – most recently – advice to City Council in response to allegations and complaints by City employees against Mayor Carter. Again, members of City Council have objected not only to the Mayor’s termination of Defendants in their capacity as additional counsel, but have also directed Defendants to treat the currently identified temporary City Attorneys as having a conflict of interest with the City. As set forth below, Plaintiffs have failed to identify any legal basis supporting their position that City Council is prohibited from retaining Defendants to provide additional legal services to the City, and their motion for TRO should be denied.

c. Plaintiffs Cannot Demonstrate a Protectable Right

Plaintiffs’ motion for TRO should be denied because Plaintiffs cannot demonstrate a right in need of protection. The motion argues primarily that there can be only one “City Attorney,” and the Mayor has appointed Ancel Glink to serve on a temporary basis in that capacity. (Plaintiffs’ Motion, ¶45) Plaintiffs then, without citing any authority, proclaim Mayor Carter was entitled to terminate Defendants’ services without a vote of City Council.

Plaintiffs’ counsel have both pointed the City Council members and now this Court to the case of Lenihan, which was referenced and discussed by Attorney Daniel at the February 21, 2023 City Council meeting. *Village of Westmont v. Lenihan*, 704 N.E.2d 891 (Ill. App. 1998). The Lenihan case was also cited by Ms. Krafthefer in her letter to the City Council stating they could not retain any attorney without approval of the Mayor. Here again, in this case, the Lenihan case is cited as comparable. (See ¶48 of Emergency Motion for TRO) Defendants appreciate the Lenihan case involved Mr. Daniel personally, as attorney for the village. However, Defendants disagree that the case has been fairly presented to the City or this Court.

Notably, the *Lenihan* case involved an ordinance that expressly and unilaterally provided the Mayor the authority to select all attorneys for the City. 704 N.E.2d at 895 (Ordinance 2-222 stating “*The mayor with the consent of the board of trustees may from time to time retain an attorney to represent or advise the village on legal matters if no village attorney has been appointed; and he may likewise retain special counsel to advise or represent the village on special matters or to assist the village attorney.*”) It is no secret that no such ordinance exists in the City of Silvis.

The Court in *Lenihan* expressly held that Ordinance 2-222 (quoted above) authorized the mayor to retain additional counsel with the consent of the board of trustees. Relying on *Lenihan* for the proposition that the Municipal Code alone reserves such authority to the Mayor is inaccurate. The Court’s holding was expressly tied to “the applicable village ordinances.” *Id.* at 897 (“Therefore, regardless of whether section 8-1-7(b) of the Code permits the board of trustees to independently retain additional outside legal counsel, it seems apparent that the board of trustees does not have the authority to take such unilateral action under the applicable village ordinances.”) (emphasis added) A year later, the Illinois Appellate Court reiterated the impact of the village’s ordinances on this holding when deciding the case of *Sampson v. Graves*, 711 N.E.2d 1118 (Ill. App. 1999). In *Sampson*, the city operated under a strong mayor form of government, which provides the highest level of authority to the mayor in making unilateral decisions. In that case, the court reiterated that *Lenihan* involved an ordinance “granting the mayor the sole authority to hire attorneys for the aldermen” when ultimately holding an ordinance providing authority to the Chair of the Finance Committee to make recommendations to all of city council on selection of legal counsel was valid.

Standing in contrast to the ordinance in *Lenihan*, the City of Silvis Code of Ordinances acknowledges the Mayor's statutory right to appoint a City Attorney, subject to the advice and consent of council, consistent with the Illinois Municipal Code. The Silvis Ordinances further delineate express authority in standing committees to make recommendations to City Council on specific subjects, including "City legal services." Plaintiffs' motion entirely ignores City Council's ability, as provided for by its own Code of Ordinances, to obtain legal services. (Silvis City Code, Sec. 2-111) Specifically, the Silvis City Code under Chapter 2 "Administration," Article II "City Council," Division 3 "Committees," provides as follows: "Sec. 2-111. – Standing committees designated. The standing committees of the city council shall be as follows, with responsibility for proposed ordinances or other council action dealing with the indicated subjects:... (7) Ordinance: (a) Preparation and revision. (b) Codification. (c) Municipal League. (d) City legal services. (emphasis added)

Notably, and in conformance with the Silvis City Code, Defendants were retained by a vote of the City Council. In 2016, Defendants were approved as independent contractors by the City Council. (See Exhibit A, September 20, 2016 Committee of the Whole minutes including "motion to place paying Pappas O'Connor consulting fees on the 18 October 2016 agenda; see also October 18, 2016 Minutes of City Council including motion to approve Pappas O'Connor.) After being approved by City Council, Defendants have routinely provided legal services and had such fees approved by the City Council regularly.³ Defendants have provided legal guidance at the request of the City Administrator, the Police Chief, the City Clerk, the Mayor, the City

³ Defendants do not, nor have they ever, held themselves out as "City Attorney" for the City of Silvis. Plaintiffs' motion is largely premised on the idea that the City's retention of Defendants as additional legal advisors to the City somehow prevents Plaintiffs from performing their duties. It does not. This argument is further discredited by the Mayor's recent retention of separate legal counsel specific to him in his capacity as Mayor.

Attorney and the City Council. Defendants routinely updated and reported to the City Council on matters being handled and the City Council approved its legal bills in accordance with the appropriated amounts for legal fees. As set forth in the attached affidavits of Aldermen Dyer, Lohse and Trulson, this has been the City's practice as it relates to the City's referral of other legal matters. (Exhibits K-M) Since initially being retained in 2016, City Council has routinely approved the invoices relating to Defendants on-demand provision of legal services from time to time. Not surprisingly, Plaintiffs' verified complaint and corresponding motion for TRO identifies only certain responsibilities of the Mayor without any consideration to the ability of the City's Corporate Authorities to obtain additional legal services under its own ordinances. Plaintiffs' Motion alleges Defendants were not approved by the City Council to serve as attorneys for the City. However, this is simply not true as evidenced herein.

Plaintiffs fail to identify how Council's retention of additional legal services – including those provided by Defendants – in any way conflicts with the Mayor's ability to carry-out his duties with the assistance of the City Attorney, as he has previously done. Plaintiffs' motion is based entirely on conclusory allegations without any specific factual assertions warranting the type of emergency injunctive relief requested. *Capstone Financial Advisors, Inc. v. Plywaczynski*, 2015 IL App (2d) 150957 ¶¶10-11, 46 N.E.2d 419, 422-23 (2d Dist. 2015) (“A TRO is an extraordinary remedy and the party seeking it must meet the high burden of demonstrating, through well-pled facts, that it is entitled to the relief sought.”), citing, *In re Marriage of Slomka*, 397 Ill.App.3d 137, 144, 922 N.E.2d 36 (2009) (“allegations of mere opinion, conclusion, or belief are not sufficient to show a need for injunctive relief”); see also, *Bridgeview Bank Group v. Meyer*, 2016 IL App (1st) 160042, ¶15, 49 N.E.3d 916 (“[b]road, conclusory allegations are insufficient to establish a plaintiff's entitlement to temporary

injunctive relief.”) (internal citations omitted) Because this standard has not been met, Plaintiffs’ Motion should be denied.

d. Plaintiffs’ Cannot Demonstrate They Will Suffer Irreparable Harm in the Absence of Emergency Injunctive Relief

Plaintiffs represent to the Court that there is a threat of imminent or irreparable harm justifying their request for a TRO. However, no such basis exists. At this time, there are no urgent deadlines in any of the matters which Defendants were retained by the City for representation. An upcoming arbitration Defendants have been handling just received dates from the arbitrator with earliest availability set for June 2023, more than four (4) months away. Further, the corresponding Unfair Labor Practice Charge with the Illinois Labor Relations Board just had an order entered on February 23, 2023 deferring the matter to this arbitration date. There are no other pending matters for which Defendants were retained aside from upcoming union negotiations. With regard to any of these matters, however, Defendants are not in possession of any files that have not already been provided to the City on these matters.

Lastly, Plaintiffs represent to this Court that Defendants actions are precluding their responses to FOIA requests. These claims are baseless. As discussed during the hearing on February 23, 2023 with this Court, closed session recordings are exempt from disclosure under FOIA. Plaintiffs’ representations that “upon information and belief, while in closed session, the Alderpersons did not discuss any issue that would be properly discussed in closed session,” is known to the Plaintiffs to be false. On February 13, 2023, the undersigned attorney notified Ms. Krafthefer that the closed session discussion was regarding threatened and probable litigation. Further, Ms. Krafthefer was notified that the discussion was privileged attorney-client

communications. As noted in Plaintiffs' motion, the undersigned "was present at the meeting to provide legal advice..."⁴ (See Paragraph 11 of Emergency Motion for TRO). The Aldermen have further confirmed the nature of the closed session discussion. (Exhibits K-M) Plaintiffs cannot blindly proceed as if these facts do not exist nor may they ignore the facts known to them. To continue to insist that the closed session discussion was improper based on the facts known to them appears to be a ploy to place the closed session audio in the hands of alleged respondents, providing them access to confidential information regarding complaints against them and the possible and threatened litigation that was discussed.

Defendants maintain that Plaintiffs Malmstrom and Mayor Carter were asked to leave for closed session and did so without objection. (Exhibits K, M) As such, Defendants submit that any argument as to their mandatory presence during that meeting is waived. Further, Plaintiffs insist that the Clerk and the Mayor have an absolute right to the closed session discussion, regardless of their involvement as possible respondents regarding threatened, probable or imminent litigation. The Illinois Attorney General's Office has held that a clerk may be removed from a closed session discussion when the clerk has a personal interest in the subject of the underlying nature of the proceedings. To allow the clerk to be present would defeat the purpose of the litigation exception under subsection (11) the Open Meetings Act. "Like any public officer who possesses a personal interest in the acts of the body which he serves, the clerk must necessarily withdraw from involvement in such matters." (Opinion of the Attorney General 00-

⁴ Plaintiffs state that Defendant Wright "did not inform the City Council that a roll call vote was required to go into closed session." (Paragraph 11) Plaintiffs also note that Nick Mason, the then-acting City Attorney was also present at this meeting. Despite such, Plaintiffs purport to frame legal advice as to meeting formats as the sole responsibility of Defendant Wright. Further, Plaintiffs ignore that a roll call vote is not required to go into closed session. *Wyman v. Schweighart*, 904 N.E.2d 77 (Ill. App. 2008) (holding Open Meetings Act requirement that vote of each member be publicly disclosed and recorded did not require city council to take and record each of its member's votes individually to hold closed session.)

004) Plaintiffs Malmstrom and Mayor Carter have been notified that the closed session discussion involved threatened litigation against the City as a result of complaints regarding their alleged conduct. They left the February 7, 2023 meeting after being requested to do so by Alderman Lohse. This Court should properly deny their request for access to the recording to avoid disclosure of confidential complainants and those who have provided information as such matters have further been referred to the Rock Island County State's Attorney's Office. Under the Public Officer Prohibited Activities Act, such information is confidential.

e. Defendants Provided the Closed Session Audio to the City Prior to the Filing of this Lawsuit.

Separate and apart from the above, Plaintiffs' Motion for a TRO as to the recording is moot. Defendants provided the February 7, 2023 closed session recording to the City Council prior to the filing of this lawsuit. (Exhibit N) As such, Plaintiffs' Motion as it relates to the audio recording is moot and should be dismissed.

III. CONCLUSION

For the reasons set forth herein, Defendants respectfully request Plaintiffs' motion for temporary restraining order be denied in its entirety and for any further relief the Court deems just and proper.

Dated: February 27, 2023

Allison Wright and Pappas Wright, P.C.,
Defendants

By: /s/ Allison K. Wright
Allison K. Wright

Allison K. Wright
Matthew P. Pappas
Jeffrey D. Wright
PAPPAS WRIGHT, P.C.
1617 Second Avenue, Suite 300
Rock Island, IL 61201
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Email: jwright@pappaswright.com

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2023, I served a true and accurate copy of the foregoing Response in Opposition to Plaintiffs' Motion for Temporary Restraining Order upon Plaintiffs' attorneys by electronically filing the same and by email at the following addresses:

Keri-Lyn Krafthefer
Ancel Glink, P.C.
515 5th Avenue, Suite 320
Moline, IL 61265
kkrafthefer@ancelglink.com

and

Mark W. Daniel
Daniel Law Office, P.C.
17W733 Butterfield Road, Unit F
Oakbrook Terrace, IL 60181
mark@thedaniellawoffice.com

/s/ Allison K. Wright



SILVIS CITY COUNCIL
4 October 2016 – 6:30 p.m.



- 1) Pledge of Allegiance
- 2) Roll Call
- 3) Proclamations:
- 4) Guest Speaker:
- 5) Public Comment:

6) CONSENT AGENDA BY OMNIBUS VOTE:

(All items under the Consent Agenda are considered to be routine in nature and will be enacted by a single motion and subsequent roll call vote. There will be no separate discussion of these items unless an Alderman so requests; in which event the item will be removed from the Consent Agenda and considered as the first item after approval of the Consent Agenda.)

A) Parks Building & Grounds

Motion to approve Outdoor Music Policy

B) Approve payrolls for 15 September in the amount of \$115,510.05 and 29 September \$109,979.31

C) Approve Minutes from 20 September 2016 Regular Meetings and Committee of the Whole

D) Approve all bills bearing proper signatures.

E) Resolution: 2016-51-R resolution to allow City Clerk and Deputy City Clerk to attend Municipal Clerks Institute and Academy from October 9th through October 14th at a cost not to exceed \$3,500.

7) Approve any items removed from the Consent Agenda

8) Special Non-Consent:

A) Economic Development

Item 1) Ordinance 2016-50

Motion to adopt Ordinance 2016-50 an Ordinance approving a letter engagement for an Independent Registered Municipal Advisor.

Item 2) Wells Development Agreement Ordinance 2016 52-R

Motion to adopt Ordinance 2012-52-A an amendment to the Wells development Agreement.

B) Public Works

Item 1) 9th Street storm water project \$45,747.55

Motion to accept letter of completion from McClure Engineering

Item 2) Final Pay request from Legacy for work performed on the 9th Street Storm water project

Motion to pay Final Pay request from Legacy in the amount of \$45,747.55 for work performed on the 9th Street Storm sewer project.

9) Mayor's Report:

10) Attorney's Report

11) City Administrator's Report

12) City Treasurer's Report

13) City Engineer's Report

14) City Clerk's Report

15) Call for adjournment from Regular Meeting

COMMITTEE OF THE WHOLE

20 September 2016

16) Call Committee of the Whole to Order & Roll Call

17) Comments from the Audience

18) Agenda items for discussion:

A) Finance

Item 1) *Training for Inspector Lupinski*

Discuss establishing a Resolution to allow Inspector Tom Lupinski to go to Kansas City for three days of training at a cost not to exceed \$1,500

Motion to place allowing Inspector Lupinski to go to Kansas City for training at a cost not to exceed \$1,500 on the 18 October 2016 agenda for approval.

Item 2) *Consulting Fees for Pappas O'Connor*

Discuss consulting fees for services from Pappas O'Connor

Motion to place paying Pappas O'Connor consulting fees on the 18 October 2016 agenda.

B) Parks, Building & Grounds

Discuss Townsend Engineering structural renovation plans for the Hero Street Memorial Park

Motion to place Townsend Engineering structural renovation plans for the Hero Street Memorial Park at a cost of \$25,000 on the 18 October 2016 Agenda for approval.

C) Economic Development

Item 1) *Ordinance 2016-52 Terminate TIF III*

Discuss termination of TIF III

Motion to place Ordinance 2016-52 an ordinance to Terminate TIF III on 18 October 2016 agenda for approval.

19) City Staff Reports

A) Fire Department

B) Inspections Department

C) Police Department

D) Public Works & Parks

20) Comments from the Alderpersons

21) Executive/Closed Session *** if needed

22) Adjournment

***** How to convene a Closed Session:**

Specific steps must be taken so that convening a Closed Meeting is legally accomplished as outlined in 5ILCS 120/2(a) sets down two conditions for holding a Closed Meeting. The first step is substantive: the meeting must fall into one of the exceptions listed in Section 2(c). These exceptions must be "strictly construed against Closed Meetings" 5 ILCS 120/1 (2). The second step is procedural: the public body must close the meetings "in accordance with Section 2(a)" 5 ILCS 120/2 (a) requires the public body to a roll call vote on whether to close the meeting to the public (the meeting need not be closed, even if it falls into one of the exceptions in Section 2(c). 5 ILCS 120/2(a).

Following is a list of exceptions:

- 1) Meetings on collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees;
- 2) Meetings where the purchase or lease of real property for the use of the public body is being considered, including meetings held for the purpose of discussing whether a particular parcel should be acquired;
- 3) Meetings where the setting of the price for sale or lease of real estate owned by the public body is being considered;
- 4) Meetings held to discuss litigations "when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting";
- 5) Meetings held to discuss the appointment, employment, compensation, discipline, performance or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee or legal counsel for the public body to determine its validity;
- 6) Meetings to consider the discipline, performance or removal of the occupant of a public office, when the public body has the power to remove the occupant under the law or ordinance;
- 7) Meetings to consider the selection of a person to fill a public office, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance;
- 8) Meetings to consider professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence;
- 9) Meetings for the conciliation of complaints of discrimination in the sale or rental of housing, when closed meetings are authorized by law or ordinance prescribing fair housing practices and creating a commission or administrative agency for their enforcement;
- 10) Meetings to establish reserves or settle claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or to review or discuss claims, loss or risk management information, records, data, advice, or communications from or with respect to any insurer of the local public entity or any intergovernmental risk management association or self-insurance pool of which the local government is a member;
- 11) Meetings to consider the sale or purchase of securities, investments or investment contracts;
- 12) Meetings to consider security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public or public property;
- 13) Meetings to consider informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities;
- 14) Meetings to consider evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body (which means an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon, but does not include local electoral boards when such bodies are considering petition challenges), provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning;
- 15) Meetings to consider self-evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member;
- 16) Meetings for the discussion of minutes of meetings lawfully closed under the Act either for purposes of approval by the body of the minutes or semi-annual review of the minutes as required by the Act;
- 17) Meetings to discuss the operation by a municipality of a municipal utility or the operation of a municipal power agency or a municipal natural gas agency when the discussion involves (i) contracts relating to the purchase, sale or deliver of electricity or natural gas or (ii) the results or conclusions of load forecast studies.



SILVIS CITY COUNCIL
18 October 2016 – 6:30 p.m.



- 1) Pledge of Allegiance
- 2) Roll Call
- 3) Proclamations:
- 4) Guest Speaker: Joe Terronez/Andrea Gryp
- 5) Public Comment:

6) CONSENT AGENDA BY OMNIBUS VOTE:

(All items under the Consent Agenda are considered to be routine in nature and will be enacted by a single motion and subsequent roll call vote. There will be no separate discussion of these items unless an Alderman so requests; in which event the item will be removed from the Consent Agenda and considered as the first item after approval of the Consent Agenda.)

A) Finance

Motion to approve consulting fees to Pappas O'Connor not to exceed \$3,000

B) Parks Building & Grounds

Motion to approve paying Townsend Engineering Fees for Structural Engineering at a cost not to exceed \$25,000 for Hero Street Memorial Park.

C) Approve payrolls for 13 October 2016 in the amount of \$106,943.19

D) Approve Minutes from 4 October 2016 Regular Meetings and Committee of the Whole

E) Approve all bills bearing proper signatures.

F) Resolution: 2016-54-R resolution to allow City Inspector Tom Lupinski to attend training in Kansas City from 18 October through October 21st at a cost not to exceed \$1,500.

7) Approve any items removed from the Consent Agenda

8) Special Non-Consent:

A) Finance

Motion to purchase computers for the new Police Department at a cost of \$11,662.02

B) Economic Development

Item 1) Ordinance 2016-53 Terminate TIF III

Motion to adopt Ordinance 2016-53 an ordinance terminating TIF III

Item 2) Enterprise Zone expansion

Motion to adopt Ordinance 2015-55-A amending the new Enterprise Zone application

C) Public Works

The cost of the installation or extension of the sewer at Deer Valley and Wells Development will be paid wholly from monies of the City of Silvis, state grants, or loans federal loans or grants or any combination thereof.

The City of Silvis is not given money, reimbursed or paid, either in whole or in part, by another person (except State Grants or loans or federal grants or loans;

This will include a certified copy of the budget item or the board or council minutes which authorize the construction of this project with only local funds.

Motion to install the extension of the sewer for Deer Valley and the Wells Development to be wholly paid with local funds from the City of Silvis.

- 9) Mayor's Report:
- 10) Attorney's Report
- 11) City Administrator's Report
- 12) City Treasurer's Report
- 13) City Engineer's Report
- 14) City Clerk's Report
- 15) Call for adjournment from Regular Meeting

COMMITTEE OF THE WHOLE

18 October 2016

- 16) Call Committee of the Whole to Order & Roll Call
- 17) Comments from the Audience
- 18) Agenda items for discussion:

A) Parks, Building & Grounds

Item 1) *Hero Street Memorial Park*

Discuss Plans for Hero Street Memorial Park

Motion to place plans for Hero Street Memorial Park on the 1 November 2016

B) Economic Development

Item 1) *Planters on 1st Avenue*

Discuss Planters on 1st Avenue

Motion to place the purchase of 10 planters for 1st Avenue at a cost of \$5,000 with that cost to be split with Main Street and the City of Silvis on the 1 November 2016 agenda for approval.

19) Staff Reports:

- A) Fire Department
- B) Inspections Department
- C) Police Department
- D) Public Works & Parks

- 20) Comments from the Alderpersons
- 21) Executive/Closed Session *** if needed
- 22) Adjournment

***** How to convene a Closed Session:**

Specific steps must be taken so that convening a Closed Meeting is legally accomplished as outlined in 5ILCS 120/2(a) sets down two conditions for holding a Closed Meeting. The first step is substantive: the meeting must fall into one of the exceptions listed in Section 2(c). These exceptions must be "strictly construed against Closed Meetings" 5 ILCS 120/1 (2). The second step is procedural: the public body must close the meetings "in accordance with Section 2(a)" 5 ILCS 120/2 (a) requires the public body to a roll call vote on whether to close the meeting to the public (the meeting need not be closed, even if it falls into one of the exceptions in Section 2(c). 5 ILCS 120/2(a).

Following is a list of exceptions:

- 1) Meetings on collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees;
- 2) Meetings where the purchase or lease of real property for the use of the public body is being considered, including meetings held for the purpose of discussing whether a particular parcel should be acquired;
- 3) Meetings where the setting of the price for sale or lease of real estate owned by the public body is being considered;
- 4) Meetings held to discuss litigations "when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting";
- 5) Meetings held to discuss the appointment, employment, compensation, discipline, performance or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee or legal counsel for the public body to determine its validity;
- 6) Meetings to consider the discipline, performance or removal of the occupant of a public office, when the public body has the power to remove the occupant under the law or ordinance;
- 7) Meetings to consider the selection of a person to fill a public office, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance;
- 8) Meetings to consider professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence;
- 9) Meetings for the conciliation of complaints of discrimination in the sale or rental of housing, when closed meetings are authorized by law or ordinance prescribing fair housing practices and creating a commission or administrative agency for their enforcement;
- 10) Meetings to establish reserves or settle claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or to review or discuss claims, loss or risk management information, records, data, advice, or communications from or with respect to any insurer of the local public entity or any intergovernmental risk management association or self-insurance pool of which the local government is a member;
- 11) Meetings to consider the sale or purchase of securities, investments or investment contracts;
- 12) Meetings to consider security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public or public property;
- 13) Meetings to consider informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities;
- 14) Meetings to consider evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body (which means an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon, but does not include local electoral boards when such bodies are considering petition challenges), provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning;
- 15) Meetings to consider self-evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member;
- 16) Meetings for the discussion of minutes of meetings lawfully closed under the Act either for purposes of approval by the body of the minutes or semi-annual review of the minutes as required by the Act;
- 17) Meetings to discuss the operation by a municipality of a municipal utility or the operation of a municipal power agency or a municipal natural gas agency when the discussion involves (i) contracts relating to the purchase, sale or deliver of electricity or natural gas or (ii) the results or conclusions of load forecast studies.



Office of Mayor Matt Carter
121 - 11th Street • Silvis, IL 61282
PH 309/ 792-9181 • FAX 309/ 792-9726

February 15, 2023

City Council
City of Silvis

Dear City Council Members,

As you have likely heard by now, I have terminated the labor attorney, who has been serving at my discretion as an Independent Contractor for several years. For now, I have reassigned all the City's labor work to the City Attorney. As you may know, the mayor has the power to assign the City's legal work. I have enclosed a case for your review.

I know that some of you may be upset by this action. I am planning to hold a special meeting next Wednesday evening to discuss the reasons for this action with you. Please be advised that I hope to work collaboratively with the Council for the best interests of the City of Silvis. At that time, I will also respond to your request for my resignation.

Very truly yours,

Mayor Matt Carter

Cc: Nick Mason (City Attorney)
Amy Malmstrom (City Clerk)
Nevada Lemke (City Administrator)



Caution

As of: February 15, 2023 2:32 PM Z

Village of Westmont v. Lenihan

Appellate Court of Illinois, Second District

December 22, 1998, Filed

No. 2-98-1038

Reporter

301 Ill. App. 3d 1050 *; 704 N.E.2d 891 **; 1998 Ill. App. LEXIS 883 ***; 235 Ill. Dec. 318 ****

THE VILLAGE OF WESTMONT and EDWIN V. BURKE, Indiv. and as Mayor of Westmont, Plaintiffs-Appellees, v. JAMES LENIHAN, Indiv. and as Trustee for the Village of Westmont; MARK FORZLEY, Trustee; WILLIAM RAHN, Indiv. and as Trustee; WENDY WILSON, Trustee; and KUBIESA, SPIROFF, GOSSELMAR AND PIEPER, P.C., Defendants-Appellants.

Subsequent History: [***1] Rehearing Denied January 28, 1999. Released for Publication January 28, 1999.

Prior History: Appeal from the Circuit Court of Du Page County. No. 98--CH--633. Honorable Bonnie M. Wheaton, Judge, Presiding.

Disposition: Affirmed.

Core Terms

village, appointed, board of trustees, trial court, ordinance, preliminary injunction, municipal officer, municipality, temporary, injunction, legal services, authorizes, removal, appointing power, terminated, Additionally, unilaterally, preserving, contracts, matters, permits, reasons

Case Summary

Procedural Posture

The Circuit Court of Du Page County (Illinois) denied defendant trustees and law firm's motion to dismiss and entered an order granting plaintiff mayor and municipality a preliminary injunction which enjoined the trustees' enactment of a resolution by which the trustees approved a contract for legal services with the law firm. The trustees and law firm appealed.

Overview

A previous mayor appointed the law firm to do its legal work. After the mayor took office, he removed one of its attorneys from the office of village attorney and delegated all of the municipality's legal work to another law firm. In taking these actions, he did not consult with the trustees. Thereafter, the trustees approved a resolution and contract to retain the law firm to perform duties. The resolution also terminated any appointment for legal services with the law firm appointed by the mayor. Following a hearing, the trial court issued a temporary restraining order preserving the status quo. The trustees and the law firm moved to dismiss. The trial court denied the motion to dismiss, and granted a preliminary injunction barring the trustees and law firm from operating under the contract and resolution. After the injunction was granted, the appellate court held the trial court did not abuse its discretion in granting the preliminary injunction, as the trustees did not have the power under statutory law or municipal ordinances to unilaterally hire the law firm, as doing so invaded the mayor's appointment powers.

Outcome

The order was affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Appellate Jurisdiction > Final Judgment Rule

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Motions to Dismiss

HN1 **Appellate Jurisdiction, Final Judgment Rule**

The denial of a motion to dismiss is not a final and appealable order. Such orders are not final adjudications as to the rights of the parties but are

interlocutory in nature.

Civil

Procedure > Remedies > Injunctions > Preliminary
& Temporary Injunctions

[HN2](#) Injunctions, Preliminary & Temporary Injunctions

In order to grant preliminary injunctive relief, the trial court must find that (1) the plaintiff has demonstrated a clearly ascertained right in need of protection; (2) irreparable injury will occur without the injunction; (3) no adequate remedy at law exists; and (4) there is a probability that the plaintiff will succeed on the merits of the case. It is not the purpose of a preliminary injunction to determine any controverted rights or to decide the merits of the case. Rather, a preliminary injunction is granted prior to trial on the merits for the purpose of preventing a threatened wrong and to preserve the status quo with the least injury to the parties concerned.

Civil Procedure > Appeals > Standards of
Review > Abuse of Discretion

Civil

Procedure > Remedies > Injunctions > Preliminary
& Temporary Injunctions

[HN3](#) Standards of Review, Abuse of Discretion

The issuance of a preliminary injunction is within the sound discretion of the trial court upon a prima facie demonstration that there is a fair question as to the existence of the right claimed and that the circumstances lead to a reasonable belief that the moving party will be entitled to the relief sought. The reviewing court will not set aside the trial court's determination unless there has been an abuse of discretion.

Governments > Local Governments > Duties &
Powers

Governments > Local Governments > Employees &
Officials

Governments > Local Governments > Mayors

[HN4](#) Local Governments, Duties & Powers

The Illinois Municipal Code (Code) grants the mayor the sole power to appoint municipal officers, such as a village attorney or corporate counsel. [65 Ill. Comp. Stat. 5/3.1--30--5\(a\)\(5\)](#) (1996). Such an appointment must be made with the "advice and consent" of the board of trustees. [65 Ill. Comp. Stat. 5/3.1--30--5\(a\)](#) (1996). Additionally, the Code grants the mayor the power to remove any appointed officer whenever the mayor is of the opinion that the interests of the municipality demand removal. [65 Ill. Comp. Stat. 5/3.1--35--10](#) (1996). The board of trustees may restore a removed officer by a two-thirds vote. [65 Ill. Comp. Stat. 5/3.1--35--10](#) (1996). If the officer is not restored, the Code permits the mayor to appoint a temporary successor. [65 Ill. Comp. Stat. 5/3.1--30--5\(d\)](#) (1996).

Estate, Gift & Trust Law > ... > Trustees > Duties &
Powers > General Overview

Governments > Local Governments > General
Overview

Governments > Local
Governments > Administrative Boards

Governments > Local Governments > Duties &
Powers

Governments > Local Governments > Employees &
Officials

Governments > Local Governments > Finance

[HN5](#) Trustees, Duties & Powers

Although the Illinois Municipal Code (Code) provides that the board of trustees may, by two-thirds vote, discontinue any appointed office at the end of the fiscal year and devolve the duties of that office on another municipal officer, [65 Ill. Comp. Stat. 3.1--30--5\(b\)](#) (1996), the Code does not affirmatively grant the board of trustees the power to remove appointed municipal officers. Moreover, although the board of trustees must consent to the appointment of a municipal officer, [65 Ill. Comp. Stat. 5/3.1--30--5\(a\)](#) (1996) and may fix the term of office [65 Ill. Comp. Stat. 5/3.1--30--5\(c\)](#) (1996), the Code conveys no independent appointment power to the board of trustees.

301 Ill. App. 3d 1050, *1050; 704 N.E.2d 891, **891; 1998 Ill. App. LEXIS 883, ***1; 235 Ill. Dec. 318, ****318

Governments > Local Governments > Employees & Officials

Governments > Local Governments > Ordinances & Regulations

[HN6](#) **Local Governments, Employees & Officials**

See Westmont, Ill., Code of Ordinances § 2-221.

Governments > Local Governments > Employees & Officials

Governments > Local Governments > Ordinances & Regulations

[HN7](#) **Local Governments, Employees & Officials**

See Westmont, Ill., Code of Ordinances § 2-222.

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Employees & Officials

Governments > Local Governments > Mayors

[HN8](#) **Local Governments, Duties & Powers**

The Illinois Municipal Code, [65 Ill. Comp. Stat. 5/3.1--30-5\(d\)](#) (1996), plainly permits the mayor to appoint a temporary successor following the dismissal of a municipal officer as a mayor may appoint a temporary replacement after removing an officer.

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Employees & Officials

[HN9](#) **Local Governments, Duties & Powers**

See [65 Ill. Comp. Stat. 5/8--1--7\(b\)](#) (1996).

Civil Procedure > Appeals > Standards of Review > General Overview

Governments > Legislation > Interpretation

[HN10](#) **Appeals, Standards of Review**

In interpreting the meaning of a statute, an appellate court's primary concern is to ascertain and give effect to the true intent of the legislature. The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning. The statute should be evaluated as a whole, with each provision construed in connection with every other section.

Governments > Local Governments > Employees & Officials

Governments > Legislation > Interpretation

Governments > Local Governments > Mayors

[HN11](#) **Local Governments, Employees & Officials**

Under the Illinois Municipal Code, [65 Ill. Comp. Stat. 5/1--1--2\(2\)](#) (1996), the term "corporate authorities" is defined as the mayor and the trustees.

Governments > Local Governments > Duties & Powers

Governments > Legislation > Interpretation

Governments > Local Governments > Mayors

[HN12](#) **Local Governments, Duties & Powers**

Part of [65 Ill. Comp. Stat. 5/8--1--7\(b\)](#) (1996) restricts the maximum length of certain consulting contracts to the remainder of the term of the mayor holding office at the time the contract is executed.

Civil
Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Governments > Local Governments > Duties & Powers

[HN13](#) **Injunctions, Preliminary & Temporary**

Injunctions

An injunction is proper to prevent the legislative branch of a municipality from encroaching upon and usurping statutory powers.

Estate, Gift & Trust Law > ... > Private Trusts
Characteristics > Trustees > General Overview

Evidence > Inferences & Presumptions > General Overview

Governments > Local Governments > Duties & Powers

[HN14](#) Private Trusts Characteristics, Trustees

Injury must be presumed when a village's legislative body operates in violation of both state and local law.

Civil
Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Governments > Local Governments > Employees & Officials

[HN15](#) Injunctions, Preliminary & Temporary Injunctions

Courts are legitimately reluctant to enjoin the acts of public officials. However, the issuance of an injunction is proper to prevent public officials from taking actions that are outside the scope of their authority or unlawful.

Counsel: For Mark Forzley, Kubiesa, Spiroff, Gosselar & Pieper, P.C., James Lenihan, William Rahn, Wendy Wilson, Defendants-Appellants: Kubiesa, Spiroff, Gosselar & Pieper, P.C., Attorneys at Law, Oakbrook Terrace, IL, Barbara J. Gosselar, Kubiesa, Spiroff, Gosselar & Pieper, P.C., Oakbrook Terrace, IL, John N. Pieper, Kubiesa, Spiroff, Gosselar & Pieper, P.C., Oakbrook Terrace, IL, Scott A. Schimanski, Kubiesa, Spiroff, Gosselar & Pieper, P.C., Oakbrook Terrace, IL, Ottosen, Trevarthen, Britz & Dooley, Ltd., Attorneys at Law, Wheaton, IL, John H. Kelly, Ottosen, Trevarthen, Britz & Dooley, Ltd., Wheaton, IL.

For Edwin V. Burke, Westmont, Village of: Plaintiffs-Appellees: Rathje, Woodward, Dyer & Burt, Attorneys at Law, Wheaton, IL, Peter A. Zamis, Rathje, Woodward,

Dyer & Burt, Wheaton, IL, Mark W. Daniel, Rathje, Woodward, Dyer & Burt, Wheaton, IL.

Judges: PRESIDING JUSTICE GEIGER delivered the opinion of the court. INGLIS and HUTCHINSON, JJ., concur.

Opinion by: GEIGER

Opinion

[*1051] [****320] [***2] [**893] PRESIDING JUSTICE GEIGER delivered the opinion of the court:

The instant controversy stems from a dispute between the mayor [*1052] of the Village of Westmont, Edwin Burke, and four members of the village's board of trustees, James Lenihan, Mark Forzley, William Rahn, and Wendy Wilson (collectively, trustees), concerning the employment of an attorney to provide legal services to the Village of Westmont (the village). On May 18, 1998, the trustees enacted a resolution approving a contract for legal services with the law firm of Kubiesa, Spiroff, Gosselar & Pieper, P.C. (the Kubiesa firm) and terminating any express or implied agreements with the law firm of Rathje, Woodward, Dyer & Burt (the Rathje firm). Prior to the enactment of the resolution, Mayor Burke had assigned all of the village's legal work to the Rathje firm. Mayor Burke subsequently filed a suit on behalf of the village and against the trustees and the Kubiesa firm, seeking a declaration that the resolution and contract were invalid and requesting other injunctive relief. On July 10, 1998, the circuit court of Du Page County entered an order preliminarily enjoining enforcement of the resolution and preserving the status quo. [***3] The trustees and the Kubiesa firm have filed an interlocutory appeal from this order.

The parties do not dispute the underlying facts of the case. In 1993, James Addington became mayor of the village. On June 21, 1993, he appointed Kenneth Kubiesa of the Kubiesa firm to the office of village attorney. Mayor Addington also designated Ron Civinelli as police attorney and Peter Zamis of the Rathje firm as attorney for litigation. The board of trustees unanimously approved these appointments.

In 1997, plaintiff Edwin Burke became mayor. In July 1997, Mayor Burke removed Kenneth Kubiesa from the office of village attorney. Mayor Burke never consulted with the board of trustees prior to removing Kubiesa from office. Mayor Burke also has never presented the

board of trustees with a new permanent appointment for the office of village attorney. Rather, Mayor Burke has delegated all of the village's legal work to the Rathje firm. Once again, Mayor Burke did not consult with the board of trustees prior to delegating these responsibilities to the Rathje firm.

On May 18, 1998, the defendant trustees approved a resolution and contract to retain the Kubiesa firm to perform duties as "Village Attorneys." [***4] The resolution also terminated any appointment, designation, or contract for legal services, whether express or implied, with Zamis, Mark Daniel, or the Rathje firm. The contract with the Kubiesa firm provided that the agreement would be terminated upon the appointment and confirmation of a new village attorney. Although Mayor Burke vetoed this resolution, on June 15, 1998, the trustees overrode the veto.

On June 16, 1998, Mayor Burke filed the instant complaint on [*1053] behalf of the village. The complaint named the trustees and the Kubiesa firm as defendants. In the complaint, the plaintiffs sought (1) a declaration that the trustees' resolution and the contract with the Kubiesa firm were invalid; (2) an injunction preventing the trustees and the Kubiesa firm from operating under the contract; and (3) a writ of mandamus requiring the Kubiesa firm to turn over all of the village's files in its possession. The plaintiffs subsequently filed a motion for a temporary restraining order and the entry of a preliminary injunction.

On June 22, 1998, following a hearing, the trial court issued a temporary restraining order preserving the status quo between the parties. Specifically, the order provided [***5] that both the Rathje firm and the Kubiesa firm would continue to handle those legal matters already referred to them by the village; additionally, the Rathje firm was to take any new legal matters that arose following the issuance of the temporary restraining order.

The trustees and the Kubiesa firm subsequently filed motions to dismiss the complaint pursuant to [section 2--619](#) of the Code of Civil Procedure ([735 ILCS 5/2--619](#) (West 1996)). In their motions, the defendants argued, *inter alia*, that the board of trustees was authorized to enact the subject resolution and to enter into the contract with the Kubiesa firm pursuant to [section 8--1--7\(b\)](#) of [**894] [****321] the Illinois Municipal Code (the Code) ([65 ILCS 5/8--1--7\(b\)](#) (West 1996)). The defendants also argued that the resolution did not impermissibly interfere with Mayor Burke's statutory

authority to appoint and remove village officials. For these reasons, the defendants argued that the trial court was without legal authority to enjoin enforcement of this official act.

On July 10, 1998, the trial court conducted a hearing on the motion for a preliminary injunction. At the hearing, the parties stipulated to the underlying facts and agreed [***6] to forego an evidentiary hearing. Following oral argument, the trial court granted the motion and entered a preliminary injunction barring the trustees and the Kubiesa firm from operating under the terms of the resolution. The trial court also ordered both the Rathje firm and Kubiesa firm to continue to handle those matters that they had already been assigned. Additionally, the trial court made an express finding that the office of village attorney was vacant and ordered Mayor Burke to bring forward an appointment for the office for the consent of the board of trustees. The trial court explained its ruling as follows:

"Mr. Kubiesa was removed a year ago by the action of Mayor Burke. There was no objection on the part of the trustees within a reasonable time. A year has now passed. There is an implied acquiescence by the Board in that vacancy. [*1054]

However, the existence of a vacancy and the lack of an appointment by the Mayor does not allow the trustees to step in and exercise purported powers, which have no foundation in the statute or in the ordinance.

Obviously, in our system of balance of powers, checks and balances, the statutes require that the executive make the appointment [***7] and the trustees advise and consent and approve this appointment."

By separate order, the trial court also denied the defendants' motions to dismiss the complaint. Following the denial of their motions to reconsider, the defendants filed this timely interlocutory appeal pursuant to [Supreme Court Rule 307\(a\)\(1\)](#). 166 Ill. 2d R. 307(a)(1).

On appeal, the defendants argue that the trial court erred in entering the preliminary injunction. Specifically, the defendants argue that the plaintiffs failed to present sufficient evidence demonstrating that they were entitled to a preliminary injunction. Additionally, the defendants contend that the trial court was without authority to enjoin the legislative actions of public officials. For these same reasons, the defendants contend that the trial court erred in denying their motions to dismiss the

complaint.

Initially, the plaintiffs assert that the defendants have not properly preserved their contentions of error relating to the trial court's entry of the preliminary injunction. Specifically, the plaintiffs contend that the defendants' agreement to forego an evidentiary hearing prior to the entry of the injunction was tantamount to waiver. [***8] We disagree. A review of the record demonstrates that the facts herein were uncontested and that the defendants agreed that a formal evidentiary hearing was unnecessary. However, the defendants did not stipulate to the resolution of the underlying legal questions at issue. Rather, the defendants advanced the precise legal arguments in opposition to the injunction that are raised in the instant appeal. For these reasons, we believe that the defendants have properly preserved their contentions of error relating to the entry of the preliminary injunction.

However, we do agree with the plaintiffs that the trial court's order denying the defendants' motions to dismiss was not appealable. It is well settled that [HN1](#) the denial of a motion to dismiss is not a final and appealable order. [Pizzato's Inc. v. City of Berwyn](#), 168 Ill. App. 3d 796, 798, 119 Ill. Dec. 583, 523 N.E.2d 51 (1988). Such orders are not final adjudications as to the rights of the parties but are interlocutory in nature. [Desnick v. Department of Professional Regulation](#), 171 Ill. 2d 510, 540, 216 Ill. Dec. 789, 665 N.E.2d 1346 (1996). We will therefore limit the scope of our review to the propriety of the preliminary [***9] injunction. [HN2](#)

[*1055] In order to grant preliminary injunctive relief, the trial court must find that (1) the plaintiff has demonstrated a clearly [**895] [****322] ascertained right in need of protection; (2) irreparable injury will occur without the injunction; (3) no adequate remedy at law exists; and (4) there is a probability that the plaintiff will succeed on the merits of the case. [Lindholm v. Holtz](#), 221 Ill. App. 3d 330, 333, 163 Ill. Dec. 706, 581 N.E.2d 860 (1991). It is not the purpose of a preliminary injunction to determine any controverted rights or to decide the merits of the case. [Lake in the Hills Aviation Group, Inc. v. Village of Lake in the Hills](#), 298 Ill. App. 3d 175, 182, 232 Ill. Dec. 325, 698 N.E.2d 163 (1998). Rather, a preliminary injunction is granted prior to trial on the merits for the purpose of preventing a threatened wrong and to preserve the status quo with the least injury to the parties concerned. [Lake in the Hills](#), 298 Ill. App. 3d at 182.

[HN3](#) The issuance of a preliminary injunction is within the sound discretion of the trial court upon a *prima facie* demonstration that there is a fair question as to the existence of the right claimed and that the circumstances [***10] lead to a reasonable belief that the moving party will be entitled to the relief sought. [Lake in the Hills](#), 298 Ill. App. 3d at 182-83. The reviewing court will not set aside the trial court's determination unless there has been an abuse of discretion. [Russell v. Howe](#), 293 Ill. App. 3d 293, 295, 227 Ill. Dec. 894, 688 N.E.2d 375 (1997).

In order to determine whether the plaintiffs have raised a fair question as to their right to the relief sought in their complaint, we must examine the governing provisions of the Code. [HN4](#) [Section 3.1--30--5\(a\)](#) of the Code grants the mayor the sole power to appoint municipal officers, such as a village attorney or corporate counsel. [65 ILCS 5/3.1--30--5\(a\)\(5\)](#) (West 1996). Such an appointment must be made with the "advice and consent" of the board of trustees. [65 ILCS 5/3.1--30--5\(a\)](#) (West 1996). Additionally, [section 3.1--35--10](#) of the Code grants the mayor the power to remove any appointed officer whenever the mayor is of the opinion that the interests of the municipality demand removal. [65 ILCS 5/3.1--35--10](#) (West 1996). The board of trustees may restore a removed officer by a two-thirds vote. [65 ILCS 5/3.1--35--10](#) (West 1996). If the officer [***11] is not restored, [section 3.1--30--5\(d\)](#) of the Code permits the mayor to appoint a temporary successor. [65 ILCS 5/3.1--30--5\(d\)](#) (West 1996).

[HN5](#) Although the Code provides that the board of trustees may, by two-thirds vote, discontinue any appointed office at the end of the fiscal year and devolve the duties of that office on another municipal officer (65 ILCS 3.1--30--5(b) (West 1996)), the Code does not affirmatively grant the board of trustees the power to remove appointed municipal officers. Moreover, although the board of trustees must consent to the appointment of a municipal officer ([65 ILCS 5/3.1--30--5\(a\)](#) [*1056] (West 1996)) and may fix the term of office ([65 ILCS 5/3.1--30--5\(c\)](#) (West 1996)), the Code conveys no independent appointment power to the board of trustees.

In accordance with these provisions, the village has enacted an ordinance creating the municipal office of village attorney. [HN6](#) This ordinance provides as follows:

"There is hereby created the office of village attorney, an executive office of the village. The

attorney shall be appointed by the [mayor] and the board of trustees and shall serve until his successor is appointed." Westmont Code of Ordinances § 2--221 [***12] (19).

HN7 [↑] The village has also enacted an ordinance to provide for legal counsel in instances where no village attorney has been appointed:

"The [mayor] with the consent of the board of trustees may from time to time retain an attorney to represent or advise the village on legal matters if no village attorney has been appointed; and he may likewise retain special counsel to advise or represent the village on special matters or to assist the village attorney." Westmont Code of Ordinances § 2--222 (19).

As noted above, in July 1997, Mayor Burke removed Kenneth Kubiesa from the office of village attorney. Although Mayor Burke did not consult with the board of trustees prior to the removal, he was not obligated to do so under [section 3.1--35--10](#) of the Code ([65 ILCS 5/3.1--35--10](#) (West 1996)). As the board of trustees did not subsequently restore Kenneth Kubiesa to the office of village attorney by a two-thirds vote, the removal [**896] [****323] became effective. [65 ILCS 5/3.1--35--10](#) (West 1996).

Following the removal of Kenneth Kubiesa as village attorney, Mayor Burke delegated all responsibilities for the village's legal work to Zamis and the Rathje firm. At no time [***13] did Mayor Burke seek the consent of the board of trustees for this delegation of work to the Rathje firm. Although the defendants challenge the mayor's authority to take such action, **HN8** [↑] [section 3.1--30--5\(d\)](#) of the Code plainly permits the mayor to appoint a temporary successor following the dismissal of a municipal officer. [65 ILCS 5/3.1--30--5\(d\)](#) (West 1996); see also [Village of Round Lake Beach v. Brenner, 107 Ill. App. 3d 1, 6-7, 62 Ill. Dec. 756, 436 N.E.2d 1058 \(1982\)](#) (mayor had power to appoint temporary chief of police without the consent of the board of trustees); [Michels v. McCarty, 196 Ill. App. 493, 499 \(1915\)](#) (noting that a mayor may appoint a temporary replacement after removing an officer).

The trustees subsequently passed a resolution, over Mayor Burke's veto, terminating any contractual relationship with Zamis and the Rathje firm to provide the village's legal services. However, as noted above, Mayor Burke was authorized to appoint Zamis as a temporary [*1057] replacement following the dismissal

of Kenneth Kubiesa. See [65 ILCS 5/3.1--30--5\(d\)](#) (West 1996). Based on our review of the Code, we are aware of no statutory authority or ordinance that would authorize the trustees to [***14] unilaterally terminate this temporary assignment. As already noted, the Code conveys no independent power to the board of trustees to remove appointed municipal officers. Nor have the defendants provided any authority in support of their contention that they were authorized to take such action. For these reasons, we believe that there is a fair question as to the alleged impropriety of the trustees' termination of the Rathje firm.

We also believe that there is a serious question as to whether the trustees had authority to independently retain the Kubiesa firm to perform duties as "Village Attorneys." As detailed above, under [section 3.1--30--5\(a\)](#) of the Code and the applicable village ordinances, only the mayor has the power to appoint an attorney, whether it be for the office of village attorney or as special counsel. Nowhere in the village ordinances is the board of trustees unilaterally permitted to employ an outside attorney.

The defendants argue that they were authorized to employ the Kubiesa firm under **HN9** [↑] [section 8--1--7\(b\)](#) of the Code, which provides, in relevant part:

"Notwithstanding any provision of this Code to the contrary, the corporate authorities of any municipality [***15] may make contracts for a term exceeding one year and not exceeding the term of the mayor or president holding office at the time the contract is executed, relating to: (1) the employment of a municipal manager, administrator, engineer, health officer, land planner, finance director, attorney, police chief or other officer who requires technical training or knowledge; (2) the employment of outside professional consultants such as engineers, doctors, land planners, auditors, attorneys or other professional consultants who require technical training or knowledge[.]" [65 ILCS 5/8--1--7\(b\)](#) (West 1996).

The defendants argue that this statute gives the board of trustees the authority to independently contract for outside legal services, whether or not the mayor had appointed an individual to serve as village attorney. The defendants also argue that such contracting authority does not conflict with the mayor's appointment powers under [section 3.1--30--5\(a\)](#), noting that [section 8--1--7\(b\)](#) authorizes two different types of contracts for professional services. Subparagraph (1) authorizes a

contract for the services of a professional who has been appointed as a municipal officer, such [***16] as village attorney or police chief. Subparagraph (2), on the other hand, authorizes a contract for the services of professionals who are not municipal officers but who [*1058] are retained as consultants to provide their technical expertise for the municipality.

The interpretation of this statutory language is a question of first impression. [HN10](#) [↑] In interpreting the meaning of a statute, our primary concern is to ascertain and give effect to the true intent of the legislature. [Paris v. Feder](#), 179 Ill. 2d 173, 177, 227 Ill. Dec. 800, 688 N.E.2d 137 (1997). The best evidence of legislative intent is the language [**897] [****324] used in the statute itself, which must be given its plain and ordinary meaning. [Paris](#), 179 Ill. 2d at 177. The statute should be evaluated as a whole, with each provision construed in connection with every other section. [Abrahamson v. Illinois Department of Professional Regulation](#), 153 Ill. 2d 76, 91, 180 Ill. Dec. 34, 606 N.E.2d 1111 (1992).

Based on our examination of the plain language of the statute, we agree with the defendants' initial contention that subsection (2) permits the municipal corporate authorities to retain additional outside legal services whether or not [***17] the mayor has appointed an individual to serve in the office of village attorney. However, we do not believe that [section 8--1--7\(b\)](#) permits the board of trustees to take such action unilaterally. [HN11](#) [↑] Under [section 1--1--2\(2\)](#) of the Code, the term "corporate authorities" is defined as the mayor and the trustees. [65 ILCS 5/1--1--2\(2\)](#) (West 1996). We therefore believe that the statute requires that the mayor and the board of trustees must act together in undertaking to contract for outside legal consulting services.

We note that such a conclusion is consistent with that [HN12](#) [↑] portion of [section 8--1--7\(b\)](#) that restricts the maximum length of such consulting contracts to the remainder of term of the mayor holding office at the time the contract is executed. [65 ILCS 5/8--1--7\(b\)](#) (West 1996). If the legislature had not intended the mayor to be involved in the decision to retain additional outside legal services, then there would be no reason to limit the length of such a contract for services to the mayor's term. Rather, such language appears to be intended to permit subsequently elected mayors to enter new contracting arrangements and to release them from the contracting decisions made by a [***18] prior administration.

Additionally, as noted above, section 2--222 of the Westmont Code of Ordinances authorizes the mayor to retain additional counsel with the consent of the board of trustees. Therefore, regardless of whether [section 8--1--7\(b\)](#) of the Code permits the board of trustees to independently retain additional outside legal counsel, it seems apparent that the board of trustees does not have the authority to take such unilateral action under the applicable village ordinances. As such, we believe that the plaintiffs have presented a fair question as to the alleged [*1059] impropriety of the trustees' contract for legal services with the Kubiesa firm.

Moreover, we note that our analysis is in harmony with the general principles articulated in [Pechous v. Slawko](#), 64 Ill. 2d 576, 584-85, 2 Ill. Dec. 701, 357 N.E.2d 1144 (1976), and [Village of Round Lake Beach v. Brenner](#), 107 Ill. App. 3d 1, 6-7, 62 Ill. Dec. 756, 436 N.E.2d 1058 (1982). In [Pechous](#), our supreme court held that the legislative body of a municipality could not enact an ordinance removing appointed individuals from the municipal offices of superintendent of streets, commission of public works, city collector, [***19] and city attorney and unilaterally appoint replacements for several of these officers. [Pechous](#), 64 Ill. 2d at 580, 584-85. The supreme court noted the ordinances impermissibly interfered with the exclusive right of the mayor to appoint and remove municipal officers. [Pechous](#), 64 Ill. 2d at 584-85. In [Round Lake Beach](#), this court held that a mayor had the power to appoint a temporary successor to the office of chief of police without the consent of the board of trustees and that the board had no authority to enact an ordinance depriving the mayor of this power. [Round Lake Beach](#), 107 Ill. App. 3d at 6-7. Although we acknowledge that the action taken by the trustees herein was not as extreme as that exercised in either [Pechous](#) or [Round Lake Beach](#), we nonetheless believe that these cases are demonstrative of a mayor's broad authority to appoint and remove municipal officers.

Having established that the plaintiffs have raised a fair question as to their right to the relief sought in their complaint, we briefly consider whether the plaintiffs have satisfied the remaining requirements for the entry of a preliminary injunction. Specifically, the plaintiffs were required [***20] to demonstrate the existence of a right in need of protection, that irreparable injury would occur without the injunction, and that there was no adequate remedy at law. See [Lake in the Hills](#), 298 Ill. App. 3d at 182.

[**898] [****325] Here, the trial court found that Mayor

Burke's appointment powers was a clearly ascertained right deserving of protection. We agree. As noted above, the statutory provisions of the Code and the village ordinances vest in the mayor the sole authority to appoint or retain a village attorney and special counsel with the consent of the board of trustees. In *Pechous*, our supreme court held that [HN13](#) an injunction was proper to prevent the legislative branch of a municipality from encroaching upon and usurping these statutory powers. [Pechous, 64 Ill. 2d at 584-85](#).

We also believe that the village, Mayor Burke, and the people of Westmont would suffer irreparable injury if the trustees were permitted to usurp the statutory powers of the village's executive branch. Indeed, we believe that [HN14](#) injury must be presumed when the village's [*1060] legislative body operates in violation of both state and local law. See generally [Pechous, 64 Ill. 2d at 584-85](#). Finally, we believe that [***21] the plaintiffs have demonstrated that there is no adequate remedy at law.

In closing, we acknowledge that [HN15](#) courts are legitimately reluctant to enjoin the acts of public officials. [Lindsey v. Board of Education, 127 Ill. App. 3d 413, 422, 82 Ill. Dec. 365, 468 N.E.2d 1019 \(1984\)](#). However, the issuance of an injunction is proper to prevent public officials from taking actions that are outside the scope of their authority or unlawful. [Lindsey, 127 Ill. App. 3d at 422](#). As detailed above, we believe that the plaintiffs have presented a fair question that such unauthorized action occurred in the instant case. We therefore conclude that the trial court did not abuse its discretion in entering the preliminary injunction and preserving the status quo.

For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

Affirmed.

INGLIS and HUTCHINSON, JJ., concur.

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Allison Wright

From: Joshua Dyer <jdyer.silvis@gmail.com>
Sent: Wednesday, February 15, 2023 1:47 PM
To: Allison Wright
Cc: Nevada J. Lemke; Amy Malmstrom; Matt Carter; Mark VanKlaveren
Subject: Termination letter

Dear Ms. Wright

I am writing to you to inform you that the mayor has no authority to terminate your employment. The retention of your services was an action taken by the city council and was not done as an appointment by the mayor. As such, he does not have the authority to terminate. You can disregard the letter sent by the mayor on February 14, 2023 in its entirety.

Sincerely,

Joshua M. Dyer

--

Joshua M. Dyer
4th Ward Alderman
Silvis, Illinois
(309) 792-0009

From: **Krafthefer, Keri-Lyn** <KKrafthefer@ancelglink.com>

Date: Fri, Feb 17, 2023 at 12:21 PM

Subject: Intro memo to City Council 4866-2626-9521 v.1

To: ttrulson@silvisil.org <ttrulson@silvisil.org>, lyork@silvisil.org <lyork@silvisil.org>, ikpavelonis@silvisil.org <ikpavelonis@silvisil.org>, khall@silvisil.org <khall@silvisil.org>, brockwell@silvisil.org <brockwell@silvisil.org>, rlohse@silvisil.org <rlohse@silvisil.org>, dsmith@silvisil.org <dsmith@silvisil.org>, jdye@silvisil.org <jdye@silvisil.org>, Amy Malmstrom <amymalmstrom@yahoo.com>, mcarte@silvisil.org <mcarte@silvisil.org>
Cc: Kostopulos, Margaret <MKostopulos@ancelglink.com>, Heinle, Mark <mheinle@ancelglink.com>, nlemke@silvisil.org <nlemke@silvisil.org>

Dear Mayor Carter and City Council Members:

Attached please correspondence introducing us as your acting City Attorneys. We look forward to working with you.

Keri-Lyn Krafthefer

Keri-Lyn J. Krafthefer, Partner



1979 N. Mill St., Suite 207

Naperville, IL 60563

Direct Dial: 312.604.9126

Telephone: 630.596.4610

Fax: 630.596.4611

KKrafthefer@ancelglink.com

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(F) 630.596.4611

February 17, 2023

Mayor Carter and City Council
City of Silvis
121 11th Street
Silvis, IL, 61282

Re: Introduction and request for special city council meeting

Dear Mayor Carter and City Council:

I wanted to send a letter to the Council reintroducing my law firm. As you may recall, I recently Zoomed into a City Council meeting as our law firm represents the Municipal Clerks of Illinois and the City Clerk asked us to participate in a meeting about the Clerk's office. Recently, Mayor Carter has asked us to step in and temporarily serve as the city attorneys following the City Attorney's resignation and request to perform no further legal work.

As I mentioned at the City Council meeting, our law firm represents over 200 units of local government, including over 60 municipalities. Here is a link to our law firm's website: www.ancelglink.com. We have several blogs you may subscribe to, if you are interested. My partner, Julie Tappendorf, hosts the Municipal Minute blog. Here is the link to her blog: <https://municipalminute.ancelglink.com>. We also author many publications used to train municipal officials and municipal attorneys throughout the state, including the Illinois Municipal Handbook, <https://www.iml.org/page.cfm?key=25668>. We will bring copies of the Illinois Municipal Handbook for the Council next week.

The three attorneys primarily assigned to Silvis will be myself, my partner Margaret Kostopulos and our colleague Mark Heinle. Here are links to our bios: <https://ancelglink.com/Attorney/Keri-Lyn-J-Krafthefer> <https://ancelglink.com/Attorney/Margaret-Kostopulos> <https://ancelglink.com/Attorney/Mark-R-Heinle>. You may know of Margaret, as she serves as the primary City Attorney for the City of Moline.

I am sorry to introduce ourselves to you in this manner. I generally prefer to do so in person, but the City has some pressing issues to be handled before next week's meetings. First, I want to assure the Council that we understand our primary job is to represent the City, not any individual elected official. I understand that there may be a perception that we are representing the Mayor, and I want to assure you that such is not the case, although we have been speaking with him over the past weeks due to challenges and concerns he had over the performance of the City's legal work and over some legal advice the City has been given. Even when advising him informally over the past few weeks, we have not been advising him personally, but on behalf of the City.

Second, we hope we can facilitate a reconciliation of whatever current issues are currently existing between the Council and the Mayor. Taxpayers do not like it when public officials fight, and they especially do not like when there is litigation between elected officials who do not

February 17, 2023

Page 2

understand their proper role within municipal government. We teach classes on this topic, and have presented a class called “Council Wars and Power Plays” for many years at the Illinois Municipal League Conference to teach municipal officials how to avoid problems that arise to splinter city councils.

I believe I also advised you that we serve as legal counsel to city administrators through the Illinois City Managers Association. We have been hired by many city administrators who have had disputes with their municipalities over their rights. We have also represented the legislative branch of municipal government in disputes with the chief executive. Accordingly, we are well aware of the rights, duties and responsibilities of all branches of city government and administration. We hope to use that knowledge to reunite the City Council so Silvis can move forward on a positive note.

Margaret, Mark and I look forward to working with you. We want to make sure that you have our contact information in the event that you need to reach it. My email is kkrafthefer@ancelglink.com. My best contact phone number is 630-399-5464. Margaret’s email is mkostopulos@ancelglink.com. Her best contact phone number is 708-203-1091. Mark’s email is mheinle@ancelglink.com. His best contact phone number is 331-457-4415. Please feel free to contact us if we can be of assistance to you.

Margaret knows of your City Administrator, Nevada Lemke, through Margaret’s work with Moline. Ms. Lemke has a good reputation and is well respected in the area. Margaret will be reaching out to Ms. Lemke today so that your Administrator is feeling supported through the process of the City finding a new City Attorney.

One issue of urgency is that the City Clerk has received a request of Aldermen Dyer, Lohse and Trulson, to call a special meeting. Three alderpersons absolutely have the right to call a special meeting, but we have some concerns about one of the items, entitled: “A vote to notify the State’s Attorney of suspected professional misconduct and potential criminal activity due to the mayor’s actions towards employees and overstepping his authority.” First, if anyone believes that the Mayor has engaged in criminal activity, the proper process for getting that before the State’s Attorney would be to file a police report. The police department would then likely forward the complaint to the Illinois State Police or another appropriate law enforcement agency for investigation because there would be a conflict with the City’s police department investigating the Mayor. Once an appropriate law enforcement agency completes an investigation on an underlying complaint and determines that charges are warranted, they would take that information to a prosecuting authority, such as the State’s Attorney.

Second, if anyone believes that criminal conduct is occurring, they should report it directly to law enforcement immediately. There is no need for the Council to take action regarding this. Our law firm has been fighting governmental corruption in Illinois for decades, and we have assisted many public bodies in complaints against public officials. If there is a serious concern,

ANCEL GLINK

February 17, 2023

Page 3

you should follow the proper process so your complaint is taken seriously. Having the City Council vote on such an issue makes the issue seem political and could diminish any potential merit.

Second, however, I have a significant concern about the phrasing of this agenda item. The Illinois Supreme Court has held that it is defamation *per se* for someone to accuse another of a criminal act. This means that, when someone accuses someone of engaging in a crime, damages are presumed and the person who is being accused would not have to prove damages to win in a defamation action. If an elected official makes a defamatory statement against another person and a lawsuit is filed for defamation, the lawsuit and any judgment would generally not be covered by the City's insurer because engaging in defamation is not within the scope of an elected official's duties. Therefore, there would generally be personal liability for such actions by the people engaging in defamation.

Having said this, it would be my recommendation that this item be removed from the agenda and that anyone having knowledge of a criminal act proceed to file a police report so that the appropriate actions can be taken. If the three alderpersons still would like us to include that item on the special meeting agenda, we will direct the City Clerk do so, but we have at least provided the City with our written opinion on this topic and our concerns about it. I ask the three Aldermen to please provide us with direction on this in writing by noon tomorrow. In the absence of any written direction from the three of them, we will remove the second agenda item and just proceed with the first.

Finally, in speaking with the Mayor, one of his frustrations is that people keep saying there has been a complaint filed against him and that "he knows what it is about." However, elected officials are entitled to notice and due process related to holding their offices. The first step of any complaint against an official would be to have the complainant put their allegations in writing and serve them upon the elected official, so that the elected official knows exactly what the allegations are and given a chance to defend or explain those allegations. To our knowledge, this has not occurred. The Mayor has informed us that, other than being requested to participate in a meeting regarding his interactions with the City Administrator, nobody has informed him of any complaint that has been made against him. If somebody has a complaint against the Mayor, it needs to be handled in an appropriate matter for the City to investigate it and to protect the City from liability. We would appreciate it if we were given details about this so that we can assist with this process.

We are happy to answer any questions regarding any of the contents of this letter. On behalf of Ancel Glink, we look forward to working with the City of Silvis.

ANCEL GLINK

February 17, 2023

Page 4

Sincerely,

A handwritten signature in dark ink, appearing to read "Keri-Lyn J. Krafthefer", with a long horizontal flourish extending to the right.

Keri-Lyn J. Krafthefer

cc: City Administrator Nevada Lemke
Margaret Kostopulos
Mark Heinle

From: Joshua Dyer <jdyer.silvis@gmail.com>

Sent: Friday, February 17, 2023 4:29 PM

To: KKrafthefer@ancelglink.com

Cc: Matt Carter <mcarter@silvisil.org>; Amy Malmstrom <amalmstrom@silvisil.org>; Nevada J. Lemke <nlemke@silvisil.org>

Subject: Ancel Glink

Dear Ms. Krafthefer

I'm not sure I understand why you are providing any advice to the city. You have not been hired by the city. By statute, the Mayor has the right to appoint, and then Council must confirm the appointment for a city attorney. Otherwise, any city legal services are handled by the ordinance committee.

I also don't understand how you would be eligible to represent the city. Prior to the resignation of the City Attorney and prior to the mayor's ill-advised attempt to fire an attorney hired by City Council to represent the City, you were providing advice and were representing the mayor. Either you were representing him personally whose interests were adverse to the city, or you were attempting to represent the city when we already had representation. The first creates a conflict of interest in becoming our attorney. The second would constitute a breach of ethics.

Please refrain from further representing that you are an attorney for the City of Silvis.

Sincerely,

Joshua Dyer

From: **Krafthefer, Keri-Lyn** <KKrafthefer@ancelglink.com>

Date: Sun, Feb 19, 2023, 1:42 PM

Subject: RE: Ancel Glink

To: Joshua Dyer <jdye.silvis@gmail.com>

Cc: Matt Carter <mcarter@silvisil.org>, Amy Malmstrom <amalmstrom@silvisil.org>, Nevada J. Lemke <nlemke@silvisil.org>, Kostopulos, Margaret <MKostopulos@ancelglink.com>, ttrulson@silvisil.org <ttrulson@silvisil.org>, lyork@silvisil.org <lyork@silvisil.org>, ikpavelonis@silvisil.org <ikpavelonis@silvisil.org>, khall@silvisil.org <khall@silvisil.org>, brockwell@silvisil.org <brockwell@silvisil.org>, rlohse@silvisil.org <rlohse@silvisil.org>, dsmith@silvisil.org <dsmith@silvisil.org>, Heinle, Mark <mheinle@ancelglink.com>

Dear Alderman Dyer:

I'm happy to clarify why we are providing advice to the City. I know it can be a confusing area of law. I am copying the rest of the Council on this email, also, because other Aldermen may have the same questions as you.

Last week, the City Attorney resigned. While normally an officer who has resigned would continue to work until a successor is appointed and qualified, the former City Attorney indicated he would do no further work for the City, effective immediately, nor would he provide outstanding and time-sensitive legal opinions the Mayor requested from him. Therefore, he abandoned his office. Section 3.1-30-5(d) of the Illinois Municipal Code permits the Mayor to appoint a temporary successor to serve as City Attorney when this occurs. The Mayor has appointed us to serve as the City Attorneys on a temporary basis until he presents a new City Attorney for confirmation by the Council.

You are correct that the Mayor appoints the City Attorney with the advice and consent of the City Council. The Mayor plans to follow that statutory procedure and will report on this issue to the City Council at a special meeting he is calling for Wednesday night.

With respect to your comments about the termination of the labor attorney, as the chief executive officer of the City, the Mayor was within his rights to direct her to perform no further work. He has significant concerns about some advice she gave to the City that is contrary to law, which he will review with the Council on Wednesday night. It appears from our review of City records that the former Mayor started using the labor attorney as an independent contractor in 2016 to perform legal work for the City related to labor matters on an informal basis. Mayor Carter no longer wants to continue that arrangement, and he is not required to. The City Code specifies that the City's legal work is to be performed by the City Attorney. This is consistent with an entire body of law in Illinois which provides that the Mayor directs the City's legal work and appoints City officers. Ms. Wright was not an officer

under your City Code, nor was she an employee. There was no Council vote required to terminate her. The City Clerk has reviewed the City Council minutes since 2016 and there is no record that the City Council ever voted to hire the labor attorney or voted to award a contract to Ms. Wright or her law firm. If you have City Council minutes or anything that indicates something different, please provide them to us and we will reevaluate our opinion.

You have been previously forwarded the Westmont v. Lenihan case. That case holds that the City Council cannot employ any attorneys to represent the City or to handle the City's legal work without the agreement of the Mayor. The City Council cannot hire a lawyer to represent the City without the Mayor's approval, nor can an individual Alderman direct the prior attorney to continue working on behalf of the City after termination by the Mayor. The Mayor's appointment powers also cannot be delegated to a committee. Our hope is to unite the Mayor and City Council to move forward with a legal team which would be acceptable to both the Mayor and City Council, all in accordance with the law, and to represent the City's legal interests until that happens. That does not have to be our law firm.

I'm not sure where you are getting your information, but the Mayor has a different attorney from a different law firm representing him and his interests as Mayor. It is my understanding from the Mayor's attorney that they hope for a peaceful transition with respect to the City's legal work, but that they will litigate the issues involving the powers of the Mayor if the Council does not understand its appropriate role. We hope that can be avoided, as we also hope for peace and look forward to meeting you and working with the Council until a permanent City Attorney is appointed.

Keri-Lyn

Keri-Lyn J. Krafthefer, Partner

**Ancel
Glink**

1979 N. Mill St., Suite 207

Naperville, IL 60563

Direct Dial: 312.604.9126

Telephone: 630.596.4610

Fax: 630.596.4611

KKrafthefer@ancelglink.com

www.ancelglink.com

From: "Krafthefer, Keri-Lyn" <KKrafthefer@ancelglink.com>
Date: February 21, 2023 at 6:02:22 AM CST
To: ttrulson@silvisil.org, lyork@silvisil.org, ikpavelonis@silvisil.org, khall@silvisil.org, brockwell@silvisil.org, rlhse@silvisil.org, dsmith@silvisil.org, jdye@silvisil.org, Amy Malmstrom <amymalmstrom@yahoo.com>, mcarter@silvisil.org
Cc: "Kostopulos, Margaret" <MKostopulos@ancelglink.com>, "Heinle, Mark" <mheinle@ancelglink.com>, nlemke@silvisil.org
Subject: Cancellation of special city council meeting for 5:30 p.m.

The Mayor's attorney has advised me that Mayor Carter has canceled the special meeting that was to occur at 5:30 p.m. today because whatever recording device is positioned to show the location of posting shows that the notice was not posted by 5:30 p.m. on Sunday evening. Accordingly, the meeting would not have been posted for 48 hours prior to 5:30 p.m. and would be in violation of the Open Meetings Act. The special meeting for after the COW meeting is still occurring, as is the special meeting on Wednesday night to discuss the City's legal counsel. It is my understanding that the posting of the meeting at city hall was removed and that the notice was also removed from the website.

If the aldermen calling the meeting would like to select another date/time for that meeting, let us know and we will make sure the notice is posted on time so that the meeting can occur in accordance with the Open Meetings Act.

Keri-Lyn

Keri-Lyn J. Krafthefer, Partner



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06 December 2022 Minutes of the Regular and Committee of the Whole Meetings of the Silvis City Council held in Silvis City Hall, Council Chambers, 121 11th Street Silvis at 6:30 pm.

1) Pledge of Allegiance:

Mayor Matt Carter called the 06 December 2022 Regular meeting of the Silvis City council to order at 6:30 pm and led the Silvis City council in the Pledge of Allegiance.

2) Roll Call:

Mayor Matt Carter asked City Clerk Amy Malmstrom to call Roll.

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

3) Proclamation:

4) Guest Speaker: Library Director, Amy Fry

5) Public Comment:

Audi from the Union spoke about Preston.

Teo Leoni 9115 Turkey Hollow Rd. Taylor Ridge, IL spoke about ASCME and Preston.

Ryan Sweeney, 4338 5th St. East Moline, IL member of the Silvis Fire Department – spoke on Preston.

David Jacquin, 316 9th St. Silvis, IL spoke on Preston.

6) Consent Agenda:

Mayor Matt Carter asked City Clerk Amy Malmstrom to read the Consent Agenda Dated Tuesday 06 December 2022. City Clerk Amy Malmstrom read the Consent Agenda Dated Tuesday 06 December 2022. Mayor Matt Carter asked if anything need to be removed from the Consent Agenda dated 06 December 2022.

Motion:

Alderman Joshua Dyer made a motion to approve the Consent Agenda dated 06 December 2022. Motion was seconded by Alderman Larry York.

Vote:

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

Motion carried 8 ayes 0 nays

7) Items removed from the Consent Agenda:

8) Special Non-Consent: None

A) Public Safety

Item 1) Police Academy Bill for 2 recruits

Motion:

Alderman Tony Trulson made a motion to approve the bill from Southwestern Illinois College for 2 Police Academy recruits in the amount of \$11,262.40. Motion seconded by Alderman Joshua Dyer.

Vote:

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

Motion carried 8 ayes 0 nays

Regular Meeting

06 December 2022

B) Ordinance

Item 1) Ordinance 2022-41 Amusement Tax Exemption

Motion:

Alderman Ian Pavelonis made a motion to suspend the rules to include Ordinance 2022-41 Amending Chapter 86 Taxation, Article VII Golf Amusement Tax, Section 86-120 through 86-126 on 06 December 2022 agenda for approval. Motion seconded by Alderman Rick Lohse.

Motion carried via voice vote:

Motion:

Alderman Ian Pavelonis made a motion to approve Ordinance 2022-41 Amending Chapter 86 Taxation, Article VII Golf Amusement Tax, Section 86-120 through 86-126 on 06 December 2022 agenda for approval. Motion seconded by Alderman Larry York.

Vote:

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

Motion carried 8 ayes 0 nays

C) Economic Development

Item 1) Ordinance 2022-44 TIF District Redevelopment Agreement for Pillar Equipment, INC. and JR Real Estate Management, LLC

Motion:

Alderman Kathy Hall made a motion to suspend the rules to include Ordinance 2022-44 TIF District Redevelopment Agreement for Pillar Equipment, INC and JR Real Estate Management, LLC in the amount NTE \$628,500. Motion seconded by Alderman Tony Trulson.

Motion carried via voice vote:

Motion:

Alderman Kathy Hall made a motion to approve Ordinance 2022-44 TIF District Redevelopment Agreement for Pillar Equipment, INC and JR Real Estate Management, LLC in the amount NTE \$628,500. Motion seconded by Alderman Rick Lohse.

Vote:

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

Motion carried 8 ayes 0 nays

Item 2) 120 9th Street

Motion:

Alderman Kathy Hall made a motion to approve purchasing an appraisal for the lot at 120 9th St. for the purpose of Parking Downtown. Motion seconded by Alderman Larry York.

Vote:

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

Motion carried 8 ayes 0 nays

Regular Meeting

06 December 2022

D) Parks, Building, & Grounds

Item 1) RMA Insurance Renewal

Motion:

Alderman Joshua Dyer made a motion to approve Ordinance 2022-43 Risk Management Insurance renewal with IMLRMA in the amount of \$172,099. Motion seconded by Alderwoman Kathy Hall.

Vote:

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

Motion carried 8 ayes 0 nays

E) Public Works

Item 1) Approve Final Costs for the 2022 Street Patching MFT Program for Centennial Contractors in the amount of \$254,450

Motion:

Alderman Larry York made a motion to approve final costs for the 2022 Street Patching MFT Program for Centennial Contractors in the amount of \$254,450. Motion seconded by Alderman Rick Lohse.

Vote:

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

Motion carried 8 ayes 0 nays

Item 2) Pay Engineers Estimate #1 for 2022 MFT Program in the amount of \$251,905.50

Motion:

Alderman Larry York made a motion to pay Engineers Estimate #1 in the amount of \$251,905.50 for the 2022 MFT Program. Motion seconded by Alderman Rick Lohse.

Vote:

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

Motion carried 8 ayes 0 nays

9) City Attorney Report: None

Regular Meeting

06 December 2022

10) City Administrator's Report:

Nevada Lemke said that this Thursday, Joe Rockwell, Lauran Rains and myself, will be doing the final walk-through on the Grand IL Trail to accept that and close the grant. The hotel feasibility study has begun, and we sent out surveys to get our top employers to respond with their needs for a hotel. We have 10 completed and 2 more we are asking for by the end of the week. Right now, the numbers are looking like we would support a hotel with #'s in the low 60's to 70's for rooms. They are looking at an urban development type to compete with what is already out there. The North Pole Express, I attended that for the Friends of the 261 in Minnesota this past weekend. It was an awesome experience and something I could see us moving forward on here in Silvis to support that development. We got notice today from the Department of Commerce and Economic Opportunity that a grant that was applied for when Jim Grafton was here for \$125,000 for 1st Avenue sidewalks was scheduled to be completed in July of 2021, we just now got the grant. We will now look at doing the sidewalks for the next construction session. I spoke with Bob Kelley the realtor for the property at 1105 3rd St., they have changed their minds and decided not to sell the property to the City. The DOT sent a letter to the City of Silvis that they will be replacing the highway lighting at the interchange of IL92 and IL84. The November 19th event for the Friends of the 261, we went to the VIP event when they brought the 3 locomotives in, there was a lot of people and support there.

11) City Engineer's Report: None

12) City Treasurer's Report: In Packet

13) City Clerk's Report:

City Clerk Amy Malmstrom said that we had Christmas in Silvis this past weekend and had about 200 people, we had it during the day to see if it would help with some of the business. I am working on photos for the website, again if you have any photos you want to share, please send those to me. The Angel Tree, we have had an amazing response. So far, we have 17 families we have helped.

14) Mayor's Report:

Mayor Matt Carter said a big thank you to the City Clerks office and everyone who participated in the food drive we had for the Railroad tickets. We were able to raise in 4 days, 450 pounds of food for the local food pantry and helped 138 individuals.

15) Call for adjournment from Regular Meeting of the Silvis City Council.

Mayor Matt Carter said if there was no more business to bring before the 06 December 2022 Regular Meeting of the Silvis City Council, he would entertain a motion to adjourn.

Motion:

Alderman Tony Trulson made a motion to adjourn from the 06 December 2022 Regular Meeting of the Silvis City Council. Motion was seconded by Alderman Rick Lohse.

Vote:

Motion carried via voice vote:

06 December 2022 Regular Meeting of the Silvis City Council adjourned at 7:03pm

Committee of the Whole

06 December 2022

16) Call Committee of the Whole to Order & Roll Call

Mayor Matt Carter called the 06 December 2022 Silvis Council Committee of the Whole Meeting to order at 7:03pm and asked City Clerk Amy Malmstrom to call the Roll.

Roll Call

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

17) Public Comments:

18) Agenda items for discussion:

A) Public Safety

Item 1) Emergency Repair for the Fire Department

Alderman Tony Trulson discussed the bill from Macqueen Equipment for a repair in the amount of \$3,372.37.

Motion:

Alderman Tony Trulson made a motion to place the bill from Macqueen Equipment for a repair in the amount of \$3,372.37 on 20 December 2022 agenda for approval. Motion seconded by Alderwoman Kathy Hall.

Vote:

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

Motion carried 8 ayes 0 nays

Item 2) Additional Lighting at Gauley Field

Alderman Larry York discussed additional lighting for Gauley Field in the amount of \$2,013.38.

Motion:

Alderman Larry York made a motion to place additional lighting at Gauley Field in the amount of \$2,013.38 on 20 December 2022 agenda for approval. Motion seconded by Alderman Joshua Dyer.

Vote:

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

Motion carried 7 ayes 1 nays

19) City Staff Reports

A) Fire Department:

Chief Winters stated that since the last Council meeting, we have responded to Carbon Cliff twice for structure fires, 1 was a single-family home and the other was a garage. I was notified the other day from the Leary foundation, which was organized by actor Dennis Leary, we received a grant for 5 thermal imaging camera's which total almost \$15,000.

B) Inspections Department: None

C) Police Department:

Chief VanKlaverren said that the Citizen's Police Academy begins January 25th through the 29th, we usually send 3 people so if anyone wants to advocate any Silvis Citizens let me know. Every Wednesday for 3 months from 6 to 9, all kinds of police stuff.

Committee of the Whole

06 December 2022

D) Public Works & Parks:

Joe Rockwell said that update on Moline Water, we are connected and waiting for sample, pressure testing and a valve to show up and we should be good by Mid-December.

20) Comments from the Alderpersons

21) Executive/Closed Session:

Motion:

Alderman Bob Rockwell made a motion to go into closed session for personnel per 5 ILCS120/2 c 1 c 4. Motion seconded by Alderman Tony Trulson.

Motion:

Alderman Tony Trulson made a motion to end Closed Session and re-open Committee of the Whole. Motion seconded by Alderman Rick Lohse.

No Action taken in Closed Session.

Motion:

Alderman Bob Rockwell made a motion to deny the Grievance. Motion seconded by Alderman Joshua Dyer.

Vote:

Members Present: Tony Trulson, Larry York, Kathy Hall, Bob Rockwell, Rick Lohse, Joshua Dyer, Ian Pavelonis

Via Video: David Smith

Motion carried 7 ayes 0 nays 1 Abstained

22) Adjournment

Mayor Matt Carter asked for a motion to adjourn from 06 December 2022 Committee of the Whole meeting of the Silvis City Council

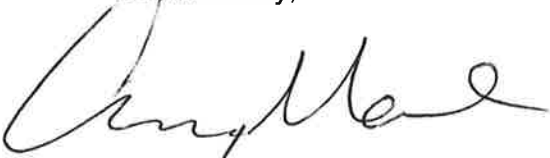
Motion:

Alderman Tony Trulson made a motion to adjourn from the 06 December 2022 Silvis City Council Committee of the Whole meeting. Motion to second by Alderman Rick Lohse.

Motion carried via voice vote:

The 06 December 2022 Committee of the Whole meeting of the Silvis City Council adjourned at 8:12 pm

Submitted by,



Amy Malmstrom
City Clerk

20 December 2022 Minutes of the Regular and Committee of the Whole Meetings of the Silvis City Council held in Silvis City Hall, Council Chambers, 121 11th Street Silvis at 6:30pm.

1) Pledge of Allegiance:

Mayor Per Tempore Larry York called the 20 December 2022 Regular meeting of the Silvis City council to order at 6:30pm and led the Silvis City council in the Pledge of Allegiance.

2) Roll Call:

Mayor Per Tempore Larry York asked Deputy City Clerk Deanna Campbell to call Roll.

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

3) Proclamation:

4) Guest Speaker:

5) Public Comment:

6) Consent Agenda:

Mayor Pro Tempore Larry York asked Deputy City Clerk Deanna Campbell to read the Consent Agenda Dated Tuesday 20 December 2022. Deputy City Clerk Deanna Campbell read the Consent Agenda Dated Tuesday 20 December 2022. Mayor Pro Tempore Larry York asked if anything need to be removed from the Consent Agenda dated 20 December 2022.

Motion:

Alderwoman Kathy Hall made a motion to approve the Consent Agenda dated 20 December 2022. Motion was seconded by Alderman Rick Lohse.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

Motion carried 6 ayes 0 nays

7) Items removed from the Consent Agenda:

8) Special Non-Consent: None

A) Public Safety

Item 1) Emergency Repair for the Fire Department

Motion:

Alderman Tony Trulson made a motion to approve the bill from Macqueen Equipment for a repair in the amount of \$3,372.37. Motion seconded by Alderman David Smith.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

Motion carried 6 ayes 0 nays

Item 2) Additional Lighting at Gauley Field

Motion:

Alderman Tony Trulson made a motion to approve additional lighting at Gauley Field in the amount of \$2,013.38. Motion seconded by Alderman David Smith.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

Motion carried 6 ayes 0 nays

Regular Meeting

20 December 2022

9) City Attorney Report: None

10) City Administrator's Report:

Nevada Lemke said just 2 quick things, we wrapped up the Avenue of the Cities project this week and we received our acceptance letter and it has been sent to IDOT. There is a Quad City Leadership cohort that I was nominated and accepted for and that I will run January through December of 2023 which will be 1 Thursday a month. I am hoping to accept that as long as the Council has no issues with that.

11) City Engineer's Report: None

12) City Treasurer's Report: In Packet

13) City Clerk's Report:

Deputy City Clerk Deanna Campbell said that the Angel Tree that City Hall did, had 18 families and helped 45 kids this Christmas.

14) Mayor's Report: None

15) Call for adjournment from Regular Meeting of the Silvis City Council.

Mayor Per Tempore Larry York said if there was no more business to bring before the 20 December 2022 Regular Meeting of the Silvis City Council, he would entertain a motion to adjourn.

Motion:

Alderman Tony Trulson made a motion to adjourn from the 20 December 2022 Regular Meeting of the Silvis City Council. Motion was seconded by Alderman Rick Lohse.

Vote:

Motion carried via voice vote:

20 December 2022 Regular Meeting of the Silvis City Council adjourned at 6:35pm

16) Call Committee of the Whole to Order & Roll Call

Mayor Per Tempore Larry York called the 20 December 2022 Silvis Council Committee of the Whole Meeting to order at 6:35pm and asked Deputy City Clerk Deanna Campbell to call the Roll.

Roll Call

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

17) Public Comments:

18) Agenda items for discussion:

A) Public Safety

Item 1) Purchasing Thermal Imaging Cameras

Alderman Tony Trulson discussed purchasing thermal imaging cameras in the amount of \$14,575.35 which will be reimbursed 100% by a grant from the Leary Foundation.

Motion:

Alderman Tony Trulson made a motion to place purchasing thermal imaging cameras in the amount of \$14,575.35 which will be reimbursed 100% by a grant from the Leary Foundation on 03 January 2022 agenda for approval. Motion seconded by Alderman David Smith.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

Motion carried 6 ayes 0 nays

Item 2) SCBA Annual Flow Testing

Alderman Tony Trulson discussed SCBA annual flow testing in the amount of \$4,237.98.

Motion:

Alderman Tony Trulson made a motion to place SCBA annual flow testing in the amount of \$4,237.98 on 03 January 2022 agenda for approval. Motion seconded by Alderman David Smith.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

Motion carried 6 ayes 0 nays

Item 3) New Locks on Doors at Fire Station

Alderman Tony Trulson discussed new locks on the doors at the Fire Station in the amount of \$2,950.00 from G-MAC.

Motion:

Alderman Tony Trulson made a motion to place purchasing new locks on the doors at the Fire Station in the amount of \$2,950.00 from G-MAC on 03 January 2022 agenda for approval. Motion seconded by Alderman David Smith.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

Motion carried 6 ayes 0 nays

B) Public Works

Item 1) Engineering Proposal for IEPA Water Quality Desktop Study

Alderman Rick Lohse discussed Engineering Proposal for IEPA Water Quality Desktop Study in the amount NTE \$15,770 from Hutchinson Engineering.

Motion:

Alderman Rick Lohse made a motion place the Engineering Proposal for IEPA Water Quality Desktop Study in the amount NTE \$15,770 from Hutchinson Engineering on 03 January 2022 agenda for approval. Motion seconded by Alderman Ian Pavelonis.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

Motion carried 6 ayes 0 nays

Item 2) Proposal for Remote Monitoring of the 17th Ave Water System

Alderman Rick Lohse discussed the proposal for Remote Monitoring of the 17th Ave Water System in the amount NTE 9,725.

Motion:

Alderman Rick Lohse made a motion to place the Remote Monitoring of the 17th Ave Water System in the amount NTE 9,725 on 03 January 2022 agenda for approval. Motion seconded by Alderwoman Kathy Hall.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

Motion carried 6 ayes 0 nays

Item 3) Internship Opportunity

Alderman Rick Lohse removed from agenda to take back to Committee.

Item 4) Garbage Charges on Vacant Homes

Alderman Rick Lohse discussed garbage charges on vacant homes

Motion:

Alderman Rick Lohse made a motion to place removing garbage charges on vacant properties on 03 January 2022 agenda for approval. Motion seconded by Alderman Tony Trulson.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

Motion carried 6 ayes 0 nays

C) Finance

Item 1) Public Works Incentive

Alderman Rick Lohse removed this item to take back to Committee.

D) Personnel

Item 1) Hiring an additional Police Officer from the Certified List

Alderman Bob Rockwell discussed hiring an additional Police Officer from the Certified List.

Motion:

Alderman Rick Lohse made a motion place the hiring of an additional Police Officer from the Certified List on 03 January 2022 agenda for approval. Motion seconded by Alderwoman Kathy Hall.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

Motion carried 6 ayes 0 nays

Item 2) Public Works New Hiring List

Alderman Bob Rockwell discussed creating a new hiring list for Public Works.

Motion:

Alderman Bob Rockwell made a motion to place creating a new hiring list for Public Works on 03 January 2022 agenda for approval. Motion seconded by Alderman Tony Trulson.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Absent: Joshua Dyer

Motion carried 6 ayes 0 nays

19) City Staff Reports

A) Fire Department:

Chief Winters that he wanted to give some clarification on the new law about Smoke Detectors. Since 1988 there has been a state law that there must be a smoke detector in every residence. If it is a rental property, it must be provided by the landlord. Starting January 1st any smoke detector installed must have the new battery with the 10-year battery. Both smoke detectors and Carbon Monoxide detectors have to be replaced every ten years. We are not going to go into every home and check this and with rentals, it may be different. We still have both at the Fire Station so if you know anyone who needs one have them get ahold of us and we will install them for them. It has been placed in the paper, a mailer has been sent out to property owners and it has been on Facebook. The most important thing is that you have operating smoke detectors. Have a Merry Christmas and stay safe.

B) Inspections Department:

Tom said that 150 11th St. now is deeded over to us. Board up & see what we need to do with it.

C) Police Department:

Chief VanKlaverren said Merry Christmas and have a Good New Year.

D) Public Works & Parks:

Joe Rockwell said that for the Moline update, the valve should be here on the 22nd. The guys are ready for Snowmageddon coming up. I will be off tomorrow through the 23rd. If anyone needs anything get a hold of Nevada.

Committee of the Whole

20 December 2022

20) Comments from the Alderpersons

Alderman Larry York said the Christmas Party for the Employees, there has been a snow emergency put out and if it hits, the Public Works will not be at the Party. So, I think it needs to be canceled so they can attend. Public Works will still get their half day off.

Alderman Tony Trulson said Congratulations to Nevada for your training opportunity. Merry Christmas and Happy New Year! To all of our employees thank you for a wonderful year and please be careful with the Storm coming up.

Alderwoman Kathy Hall said she wants to thank the City Clerks office for the wonderful job with the Angel Tree. Merry Christmas and Happy New Year and be safe.

Alderman Rick Lohse said he would like to call a finance meeting for the incentives for Public Works on Tuesday at 4:30 and follow that at 4:45 with a Public Works for the Internship. Merry Christmas and Happy New Year.

Alderman David Smith said he just wanted to thank everyone with the City of Silvis for everything that they do. Merry Christmas and Happy New Year.

21) Executive/Closed Session:

Motion:

Alderman Bob Rockwell made a motion to go into closed session. Motion seconded by Alderman Rick Lohse.

Motion:

Alderman Tony Trulson made a motion to end Closed Session and re-open Committee of the Whole. Motion seconded by Alderman Rick Lohse.

No Action taken in Closed Session.

Motion:

Alderman Bob Rockwell made a motion to deny the Grievance. Motion seconded by Alderman Rick Lohse.

Vote:

Members Present: Tony Trulson, Kathy Hall, Bob Rockwell, Rick Lohse, Ian Pavelonis, David Smith

Motion carried 5 ayes 0 nays 1 Abstained

22) Adjournment

Mayor Per Tempore Larry York asked for a motion to adjourn from 20 December 2022 Committee of the Whole meeting of the Silvis City Council

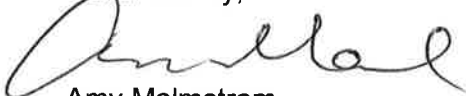
Motion:

Alderman Tony Trulson made a motion to adjourn from the 20 December 2022 Silvis City Council Committee of the Whole meeting. Motion to second by Alderman Rick Lohse.

Motion carried via voice vote:

The 20 December 2022 Committee of the Whole meeting of the Silvis City Council adjourned at 7:47 pm

Submitted by,



Amy Malmstrom
City Clerk



Matthew Carter

1d · 🌐



Public notice! This is what a Mayor receives when disagreeing with the city council for termination of a longtime employee, and stands up against the council and defends the City Clerk, it's duties and responsibilities. Sorry, I'm not part of the good old boy group!



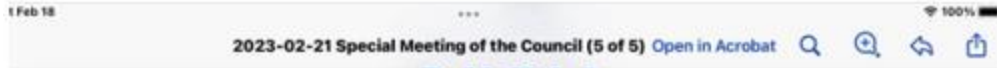
- I. A vote of no confidence in Mayor Matt Carter



Matthew Carter

Feb 18 · 🌐

Thank you!



Office of the City Clerk
Amy Malmstrom

City of Silvis
121 11th Street
Silvis, IL 61282

Tuesday, February 21, 2023

At the conclusion of Regular City Council/Committee of the Whole Meeting

Special City Council Meeting

AGENDA

NOTICE IS HEREBY GIVEN that a Special City Council Meeting of the City of Silvis, Illinois, will be held on Tuesday, February 21, 2023 at the conclusion of Regular City Council/Committee of the Whole Meeting, in accordance with 65 ILCS 5/3.1-40-25. Said meeting will be held at the City of Silvis City Hall at 121 11th Street, Silvis, Illinois. This special meeting has been called by Alderman Josh Dyer, Alderman Rick Lohse, and Alderman Tony Trulson. The meeting will be held for the purpose of the following

1. A vote of no confidence in Mayor Matt Carter



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

March 7, 2000

FILE NO. 00-004

COUNTIES:

Duty of County Clerk to Take
Minutes of County Board Meetings

The Honorable John Knight
State's Attorney, Bond County
Bond County Courthouse
Greenville, Illinois 62246

Dear Mr. Knight:

I have your letter wherein you inquire whether it is the duty of the county clerk to make a record of the proceedings and to prepare the minutes of closed meetings of the county board, and, if so, whether the clerk may properly be excluded from attendance at a closed meeting. For the reasons hereinafter stated, it is my opinion that the statutory duty of the county clerk to keep an accurate record of the proceedings of the county board requires that the clerk take the minutes of all board meetings, including closed meetings, either in person or by deputy. Therefore, the clerk or his or her deputy may not ordinarily be excluded from a county board meeting which is closed to the public.

The Honorable John Knight - 2.

Section 3-2013 of the Counties Code (55 ILCS 5/3-2013
(West 1998)) provides, in part:

"General duties of clerk. Subject to
the provisions of 'The Local Records Act',
the duties of the county clerk shall be--

1st. To act as clerk of the county
board of his county and to keep an accurate
record of the proceedings of said board
* * *

* * *

"

Further, section 5-1087 of the Counties Code (55 ILCS 5/5-1087
(West 1998)) provides:

"Alteration of duties, powers and func-
tions of county officers. No county board
may alter the duties, powers and functions of
county officers that are specifically imposed
by law. A county board may alter any other
duties, powers or functions or impose addi-
tional duties, powers and functions upon
county officers. In the event of a conflict
State law prevails over county ordinance."
(Emphasis added.)

The county clerk is charged by statute with the duty to keep the
record of the proceedings of the county board, and, because that
duty is one imposed by statute, the county board cannot alter it.
The record kept by the clerk is the only competent proof of the
official acts of the board. People v. Cleveland, Cincinnati,
Chicago & St. Louis Ry. Co. (1915), 271 Ill. 226, 228-29.

The Honorable John Knight - 3.

The proceedings of the county board include those which are conducted in meetings which are properly closed to the public. The Open Meetings Act specifically requires that minutes be kept of all meetings, whether open or closed. (5 ILCS 120/2.06 (West 1998).) Because minutes of closed meetings must be kept, and it is the statutory duty of the clerk to keep those minutes, it is my opinion that the clerk must be permitted to be present at closed as well as open meetings of the board for the purpose of taking minutes. The county board cannot, consistently with the provisions of section 5-1087 of the Counties Code, prohibit the clerk from attending meetings for the purpose of carrying out this duty.

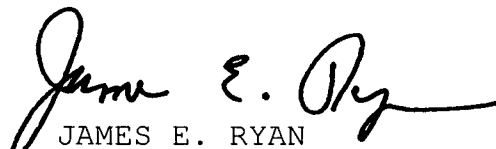
Although it might be suggested that the duty to "keep an accurate record of the proceedings" of the board could be satisfied by the preservation of records created by others, a mere custodian generally cannot assure the accuracy of such records. Section 3-2013 of the Counties Code clearly contemplates that the clerk is not charged merely with the preservation of the records of proceedings, but is responsible for creating them. The duty to keep an accurate record of proceedings requires the clerk's presence at the meetings of the board.

It is conceivable that circumstances might arise in which the clerk's presence at a closed meeting of the county

The Honorable John Knight - 4.

board would be inappropriate due to a personal interest of the clerk in the subject of the proceedings. For example, if the clerk was involved adversarially in litigation affecting the county, the clerk's presence at a closed meeting at which the county's litigation strategy is being discussed would defeat the purpose of the exception permitting such a meeting. (See 5 ILCS 120/2(c)(11) (West 1998).) Like any public officer who possesses a personal interest in the acts of the body which he serves, the clerk must necessarily withdraw from involvement in such matters. Only in extraordinary circumstances such as these, however, may the clerk properly be excluded from attendance at a closed meeting of the board, and a person other than the clerk or a deputy clerk be charged with keeping the records of the proceedings of the board and preparing the minutes thereof.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL

**IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS**

CITY OF SILVIS, an Illinois municipal)
corporation, MATT CARTER, in his official)
capacity as Mayor of the City of Silvis, Illinois,)
and AMY MALMSTROM, in her capacity as)
City Clerk of the City of Silvis, Illinois.)

Plaintiffs,)

v.)

ALLISON WRIGHT AND PAPPAS WRIGHT,)
P.C.)

Defendants.)

No. 2023CH7

AFFIDAVIT OF ALDERMAN JOSHUA DYER

I, JOSHUA DYER, Affiant, under penalty of perjury pursuant to 28 U.S.C. §1746, and in support of Defendants' Response to Plaintiffs' Motion for a Temporary Restraining Order swear, affirm or depose the truth and accuracy of the following, which is information from my personal knowledge:

1. I am currently an alderman on the City of Silvis City Council.
2. In my time as alderman, the City has retained the services of various attorneys in addition to the City Attorney position.
3. Allison Wright was retained by the City Council in 2016 as an independent contractor to provide legal services to the City and has provided various legal services since that time. Several other attorneys have been retained as independent contractors, as well.
4. It is my understanding that Mayor Carter does not have the unilateral authority to fire Ms. Wright as an independent contractor of the City where her services were approved by City Council and she was not appointed by the Mayor.
5. The Mayor's alleged unilateral termination of Allison Wright is inconsistent with the manner in which the City of Silvis has operated and retained attorneys.
6. On October 18, 2022, a City employee filed a harassment complaint against another City employee, which resulted in an investigation.
7. The City directed Allison Wright to assist with the investigation. Ultimately, the accused employee was terminated by the City after he did not dispute the allegations. His termination was ultimately upheld by a unanimous vote of the City Council at the December 6, 2023 City Council meeting.
8. Over the course of the next several months following the City Council's vote to uphold the termination, there were numerous allegations from City employees claiming they were subjected to harassment and retaliation by the Mayor for their involvement in the investigation. These complaints were brought to the Mayor's attention. Allegations then claimed things got worse. After such escalation, the City Council voted to go into closed session at its February 7, 2023 meeting.

9. An alderman then requested that the Mayor and the Clerk excuse themselves from the closed session discussion since the allegations involved both of them. They left without objection.
10. Two attorneys for the City were present during the closed session discussion to advise the Council, the then-acting City Attorney, Nick Mason and Allison Wright.
11. During closed session, the City Council discussed the allegations, the recent developments and concerns that a claim against the City was probable or imminent. In the days leading up to the February 7th meeting, reports regarding fear to be at work had escalated.
12. In fact, there were reports that individuals intended to retain legal counsel and file claims against the City. A full recording of closed session was kept in accordance with the Open Meetings Act.
13. At the end of the February 7, 2023 closed session, the alderpersons determined their next step was to send a letter to the Mayor and call for his resignation.
14. On February 14, 2023, I delivered the letter requesting Mayor Carter's resignation, signed by all eight (8) alderpersons, to Mayor Matt Carter at City Hall at or around 8:30 AM. During my conversation with him, Mayor Carter remarked that he "could have" disciplined a particular employee involved in the underlying complaints. In my opinion, the comment regarding this employee was concerning as this particular employee had no performance issues prior to their filing of complaints.
15. Later that same day, Mayor Carter sent a letter to Allison Wright stating he was terminating her legal services. In my opinion, the termination letter was issued in response to Ms. Wright's involvement in assisting City Council in addressing the complaints made by City employees against the Mayor as I would expect her to do as an attorney for the City.
16. On February 15, 2023, the Mayor then sent a letter entitled "Letter to Council on legal advice" which included a case attachment. The case was Village of Westmont v. Lenihan and included the Mayor's attorney's name, Keri-Lyn Krafthefer, at the bottom center of every page. The attached **Exhibit B** is a true and correct copy of the letter received by me. The letter further stated that the Mayor had reassigned all the City's labor work to the City Attorney, Nick Mason.
17. A few hours later, I sent an email to Ms. Wright, copying Nevada Lemke (City Administrator), Amy Malmstrom (City Clerk), Matt Carter (Mayor) and Mark VanKlaveren (Chief of Police), and stating the Mayor does not have the authority to terminate Ms. Wright and stating she should disregard the Mayor's letter in its entirety. See **Exhibit C**.
18. That same day, I asked the City Clerk to place a vote of no confidence in the Mayor on the agenda for the February 21, 2023 regular meeting. The City Clerk did not put it on the agenda.
19. The following day, I delivered notice of a special meeting called by myself, Alderman Richard Lohse and Alderman Tony Trulson to the Clerk and directed her to post the notice. The notice included agenda items regarding a vote of no confidence in the Mayor and discussion on referring specific matters to the State's Attorney's Office.
20. In response, I received an email from Ms. Krafthefer claiming the agenda item regarding the State's Attorney's Office was defamation against the Mayor and directing that it not be included. In response to this, I then directed the Clerk to publish notice of the special meeting as directed by three aldermen to include only a vote of no confidence in the Mayor. The Clerk refused to do so that day.

21. Also on Friday, February 17, 2023, Ms. Krafthefer emailed the entire City Council notifying all alderpersons that she was the acting City Attorney. The attached **Exhibit D** is a true and correct copy of the letter received.
22. In response to Ms. Krafthefer's letter, I sent an email to Ms. Krafthefer explaining, in part, that she had a conflict of interest in representing the City because she stated earlier that week that she represents Mayor Matt Carter individually. The attached **Exhibit E** is a true and correct copy of the email sent.
23. On Sunday, February 19, 2023, Keri Krafthefer emailed all City Council members and stated the following, in part:
 - a. She was the acting City Attorney.
 - b. Mayor Carter had the authority to direct Ms. Wright do no further legal work.
 - c. The City Code states the City's legal work is to be performed by the City Attorney.
 - d. "An entire body of law" provides that the Mayor directs the City's legal work.
 - e. There was no Council vote required to terminate Ms. Wright.
 - f. "The City Clerk has reviewed the City Council minutes since 2016 and there is no record that the City Council ever voted to hire the labor attorney or voted to award a contract to Ms. Wright or her firm."
 - g. The Lenihan case sent to the Alderpersons on Friday (2/17/23) holds "that the City Council cannot employ any attorneys to represent the City or to handle the City's legal work without the agreement of the Mayor."
 - h. "The City Council cannot hire a lawyer to represent the City without the Mayor's approval." See **Exhibit F**.
24. I was concerned with Ms. Krafthefer's communication for various reasons, including but not limited to, the fact that her statement claimed that City Council cannot hire any attorneys without the Mayor's approval.
25. I felt this advice was misrepresenting the legal rights of City Council.
26. I further felt this advice was inconsistent with the City of Silvis Municipal Code which allows the City Council to retain legal counsel.
27. Several hours after Ms. Krafthefer's email on February 18, 2023, Alderman Richard Lohse, Alderman Anthony Trulson and I directed the City Clerk to post notice of a special meeting duly called for 5:30 PM on Tuesday, February 21, 2023. The purpose of the meeting was to discuss an ordinance on Legislative Counsel, which provided yet another mechanism for the City Council members to hire an attorney.
28. At this point in time, it appeared to me that Ms. Krafthefer was advancing the individual interests of Mayor Matt Carter.
29. At this point in time, it appeared to me that Ms. Krafthefer was not providing City Council members with legal options for us to obtain legal advice from anyone other than her and her firm, who have a conflict.
30. At this point in time, it appeared to me that Ms. Krafthefer's advice was intended to mislead City Council as to its rights to obtain access to legal representation for her own financial gain and benefit by claiming that she was the only individual who could provide legal services.
31. I was aware that Ms. Krafthefer serves as legislative counsel to municipalities or villages in the State of Illinois and am also aware that Ms. Krafthefer was involved in a 2017 case

where the court confirmed City Council members have the right to hire legislative counsel.

32. Ms. Krafthefer never offered or advised the City Council that we had the option to retain legislative counsel until I, along with two other aldermen, sent notice that we intended to do so. She then offered to help draft the ordinances.
33. When Ms. Krafthefer offered to draft the ordinances for legislative counsel, I felt it confirmed that she had not been upfront with the City Council about our legal options regarding access to attorneys. Her misrepresentation in this regard appeared to be in the sole interests of the Mayor by limiting City Council's ability to get legal advice from anyone besides her. It further appeared to serve her and her firm's own financial benefit.
34. On Sunday, February 19, 2023 at 4:24 PM, the City Clerk was directed by three aldermen to immediately post notice of a special meeting for Tuesday, February 21, 2023 at 5:30 PM. The purpose of this meeting was to discuss an ordinance for legislative counsel and was an alternative means of getting access to legal representation.
35. The Clerk did not respond to the request until after the 48-hour deadline had lapsed when she emailed back at 6:21 PM. As a result of her failure to respond, I directed Nevada Lemke, the City Administrator, to post notice of the meeting at City Hall. Ms. Lemke posted notice of the meeting at City Hall but does not have access to the City website.
36. The Clerk responded at 6:21 PM on February 19, 2023, confirming she had received the directive to post notice of the special meeting on the website. She refused to post the special meeting notice on the website that day.
37. The Clerk did not post notice of the special meeting on the City website until the following day, February 20, 2023.
38. On the day the meeting was to be held, Ms. Krafthefer sent an email to the City Council cancelling the meeting claiming it was not timely posted. See **Exhibit G**.
39. I was notified that Mayor Carter reviewed video surveillance in City Hall and he claimed the City Administrator posted notice at 5:32 PM, instead of 5:30 PM. The City Clerk then removed notice of the meeting from the City's website.
40. Neither Ms. Krafthefer nor the Clerk conferred with me prior to sending out notice that the meeting was cancelled. At this time, Ms. Krafthefer's involvement in the cancellation appeared to me to be for her own financial gain and to limit the City Council's access to legal representation other than her.
41. I then objected to the cancellation of the meeting to discuss getting access to legal representation and directed that the notice be re-posted to the website, further stating that the City Council would hold the meeting no earlier than 48-hours after posting.
42. Ultimately, over my objection, the meeting was postponed after Ms. Krafthefer emailed and the City Clerk sent the cancellation out to individuals, including the media.
43. At 4:33 PM on February 21, 2023, the Clerk sent the meeting minutes for the February 7, 2023 meeting for review to the City Council. The City Council had less than one hour to review prior to the meeting that was originally scheduled for 5:30 PM.
44. The draft minutes sent by the Clerk stated the following, "Alderman Rick Lohse made a motion to go into closed session to discuss ILCS 120/22 (c)(1) (2) (sic) which covers appointment, employment, compensation, discipline, performance or dismissal of specific employees and which covers pending or threatened litigation. Alderman York seconded the motion. Alderman Lohse then clarified that his motion was to have only the Aldermen and Lawyers, not the mayor or clerk. There was no vote on the motion to go into closed session or the proposed amendment."

- a. I did not see the above language included in the minutes at the time I voted on the minutes due to the stressful circumstances presented at the February 21, 2023 meeting.
 - b. I disagree with the minutes as stated.
 - c. Specifically, Alderman Lohse cited both (c)(1) and threatened litigation as reasons for going into closed session. Alderman York then seconded the motion and all alderpersons present consented. No objections were made that the vote did not pass. Alderman Lohse then requested that everyone except the alderpersons and the attorneys excuse themselves for the closed session. Everyone, including the Mayor and the Clerk, left without objection.
45. The minutes drafted by the City Clerk do not accurately reflect what occurred at the February 7, 2023 meeting. Given the incredibly short turnaround time and unusual circumstances presented, I did not notice the error. I intend to move to correct the minutes at a subsequent meeting.
46. Further, attached as **Exhibit H** are minutes, by way of example, of December 6 and December 20, 2022 meetings of the City Council.
- a. It was not the customary practice of the City Clerk to record the individual votes to go into closed session.
 - b. I believe the language included in the February 7, 2023 minutes is a departure from the Clerk's customary practice and is an intentional act to misrepresent what occurred so that the minutes more closely align with the Clerk and Mayor's arguments in an effort to obtain access to the recording which involved allegations about them.
47. At the February 21, 2023 City Council meeting, an attorney from Ancel Glink, Ms. Krafthefer's firm held themselves out as the acting City Attorney. Further, Mark Daniel, who explained he has worked with Ancel Glink on many occasions, stated he now represents the Mayor individually.
48. During the City Council meeting, I publicly stated on several occasions as a point of order that I objected to the temporary appointment of Keri Krafthefer or Ancel Glink because they have a conflict of interest and cannot represent the City.
49. Also during the February 21, 2023 City Council meeting, several members of the public spoke during public comment. Among them was an employee who identified himself as the complainant who filed a harassment complaint on October 18, 2022, and as he shared, the complaint ultimately was found to have merit and resulted in the termination of another employee. The complainant-employee thanked the City Council for addressing the complaint and stated his opinion about the positive impact it has had on the work environment.
50. A union representative who does not work for the City also spoke. Over the course of the last several months, the City received complaints about this representative alleging she refused to represent the complainant-employee and mistreated him as a result of his harassment complaint against another member. Over the course of the last several months, concerns were also raised with the City regarding the Mayor's conduct following the harassment complaint. During the February 21, 2023 City Council meeting, the union representative accused of retaliating against the complainant-employee thanked Mayor Carter in open session for sending the termination letter regarding Ms. Wright. I was deeply concerned by the union representative's acknowledgement that Mayor Carter had terminated Ms. Wright because of the underlying harassment complaint, of which she was asked to investigate and advise on.

51. I saw Mayor Carter's Facebook post made days before the meeting, which acknowledged the City Council's vote of no confidence against the Mayor was related to the harassment complaint, which resulted in the termination of the respondent-employee. (See **Exhibit I** Facebook post of Mayor Matt Carter on 2/18/23 stating the vote was based on him "disagreeing with the city council for termination of a longtime employee...") Notably, the alleged harassment was not disputed by the respondent-employee.
52. The Mayor later removed this comment and changed the post to simply read, "Thank you!" (See second page of **Exhibit I**)
53. A motion for a vote of no confidence against the Mayor was passed on February 21, 2023 by the City Council.
54. On February 23, 2023, the City Council held another special meeting for the purpose of discussing the City's access to attorneys. During that meeting, objection was again made against Ms. Krafthefer as temporary City Attorney on the basis that she had a conflict of interest.
55. During that meeting, the City Council also discussed concerns that we had been told the City Council could not retain any attorney without approval of the Mayor, despite Ms. Krafthefer's later acknowledgement that we could.
56. Ultimately, the City Council voted unanimously to approve an ordinance allowing the City Council to retain legislative counsel and special counsel. As of the date of this affidavit, the minutes have not yet been finalized for this meeting.
57. I felt Ms. Krafthefer's representations to the City Council were intended to manipulate us into believing that we had no other legal options but to take advice from her and her firm, despite our objection that she has a conflict in advising the City due to her acknowledged representation of the Mayor and persistent attempts to further his individual interests.
58. I further am concerned that Ms. Krafthefer stated during the City Council meeting that Mayor Carter's new attorney, Mark Daniel, was also asked about the Legislative Counsel Ordinance and given an opportunity to provide his own input and proposed revisions to the City. This appears entirely inconsistent with the City Council members being told that we may only seek legal advice from Keri Krafthefer and her firm, over our objections.
59. I maintain that Keri Krafthefer and the law firm of Ancel Glink have a conflict of interest since they represent or did represent Matt Carter and further maintain that the legal advice they have purported to give as temporary city attorney appears to solely advance the individual interests of Matt Carter and expose the City of Silvis.
60. I was not advised of the instant lawsuit filed against Allison Wright or Pappas Wright, P.C. prior to its filing nor did Ms. Krafthefer ask me for any information related to the same. The matter of filing the instant litigation was never brought to the attention of the City Council nor was it ever approved by Council.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 26, 2023



Joshua Dyer
City of Silvis Alderman, 4th Ward

**IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS**

CITY OF SILVIS, an Illinois municipal)
corporation, MATT CARTER, in his official)
capacity as Mayor of the City of Silvis, Illinois,)
and AMY MALMSTROM, in her capacity as)
City Clerk of the City of Silvis, Illinois.)

Plaintiffs,)

v.)

ALLISON WRIGHT AND PAPPAS WRIGHT,)
P.C.)

Defendants.)

No. 2023CH7

AFFIDAVIT OF ALDERMAN TONY TRULSON

I, TONY TRULSON, Affiant, under penalty of perjury pursuant to 28 U.S.C. §1746, and in support of Defendants' Response to Plaintiffs' Motion for a Temporary Restraining Order swear, affirm or depose the truth and accuracy of the following, which is information from my personal knowledge:

1. I am currently an alderman on the City of Silvis City Council.
2. In my time as alderman, the City has retained the services of various attorneys in addition to the City Attorney position.
3. Allison Wright was retained by the City Council in 2016 as an independent contractor to provide legal services to the City and has provided various legal services since that time. Several other attorneys have been retained as independent contractors, as well.
4. It is my understanding that Mayor Carter does not have the unilateral authority to fire Ms. Wright as an independent contractor of the City where her services were approved by City Council and she was not appointed by the Mayor.
5. The Mayor's alleged unilateral termination of Allison Wright is inconsistent with the manner in which the City of Silvis has operated and retained attorneys.
6. On October 18, 2022, a City employee filed a harassment complaint against another City employee, which resulted in an investigation.
7. The City directed Allison Wright to assist with the investigation. Ultimately, the accused employee was terminated by the City after he did not dispute the allegations. His termination was ultimately upheld by a unanimous vote of the City Council at the December 6, 2022 City Council meeting.
8. Over the course of the next several months following the City Council's vote to uphold the termination, there were numerous allegations from City employees claiming they were being subjected to harassment and retaliation by the Mayor for their involvement in

the investigation. These complaints were brought to the Mayor's attention. Allegations then claimed things got worse.

9. I signed the letter asking the Mayor to resign.
10. On February 14, 2023, the letter requesting Mayor Carter's resignation, signed by all eight (8) alderpersons, was delivered by an alderman to Mayor Matt Carter at City Hall.
11. Later that same day, Mayor Carter sent a letter to Allison Wright stating he was terminating her legal services. In my opinion, the termination letter was issued in response to Ms. Wright's involvement in assisting City Council in addressing the complaints made by City employees against the Mayor as I would expect her to do as an attorney for the City.
12. On February 15, 2023, the Mayor then sent a letter entitled "Letter to Council on legal advice" which included a case attachment. The case was Village of Westmont v. Lenihan and included the Mayor's attorney's name, Keri-Lyn Krafthefer, at the bottom center of every page. The attached **Exhibit B** is a true and correct copy of the letter received by me. The letter further stated that the Mayor had reassigned all the City's labor work to the City Attorney, Nick Mason.
13. On February 17, 2023, I joined in calling a special meeting with Alderman Dyer and Alderman Lohse, such notice was delivered to the Clerk and she was directed to post the notice. The notice included agenda items regarding a vote of no confidence in the Mayor and discussion on referring specific matters to the State's Attorney's Office.
14. I was notified that Ms. Krafthefer claimed the agenda item regarding the State's Attorney's Office was defamation against the Mayor and directed that it not be included. I then joined in an amended call for a special meeting to include only a vote of no confidence in the Mayor. The Clerk did not post notice of the meeting that day.
15. Also on Friday, February 17, 2023, Ms. Krafthefer emailed the entire City Council notifying all alderpersons that she was the acting City Attorney. The attached **Exhibit D** is a true and correct copy of the letter received.
16. I believe Ms. Krafthefer and the law firm of Ancel Glink have a conflict with the City of Silvis because she stated earlier that week that she represents Mayor Matt Carter individually.
17. On Sunday, February 19, 2023, Keri Krafthefer emailed all City Council members and stated the following, in part:
 - a. She was the acting City Attorney.
 - b. Mayor Carter had the authority to direct Ms. Wright do no further legal work.
 - c. The City Code states the City's legal work is to be performed by the City Attorney.
 - d. "An entire body of law" provides that the Mayor directs the City's legal work.
 - e. There was no Council vote required to terminate Ms. Wright.
 - f. "The City Clerk has reviewed the City Council minutes since 2016 and there is no record that the City Council ever voted to hire the labor attorney or voted to award a contract to Ms. Wright or her firm."
 - g. The Lenihan case sent to the Alderpersons on Friday (2/17/23) holds "that the City Council cannot employ any attorneys to represent the City or to handle the City's legal work without the agreement of the Mayor."
 - h. "The City Council cannot hire a lawyer to represent the City without the Mayor's approval."See **Exhibit F**.

18. I was concerned with Ms. Krafthefer's communication for various reasons, including but not limited to, the fact that her statement claimed that City Council cannot hire any attorneys without the Mayor's approval.
19. I felt this advice was misrepresenting the legal rights of City Council.
20. I further felt this advice was inconsistent with the City of Silvis Municipal Code which allows the City Council to retain legal counsel.
21. Several hours after Ms. Krafthefer's email on February 18, 2023, Alderman Joshua Dyer, Alderman Rick Lohse and I directed the City Clerk to post notice of a special meeting duly called for 5:30 PM on Tuesday, February 21, 2023. The purpose of the meeting was to discuss an ordinance on Legislative Counsel, which provided yet another mechanism for the City Council members to hire an attorney.
22. At this point in time, it appeared to me that Ms. Krafthefer was advancing the individual interests of Mayor Matt Carter.
23. At this point in time, it appeared to me that Ms. Krafthefer was not providing City Council members with legal options for us to obtain legal advice from anyone other than her and her firm, who have a conflict.
24. At this point in time, it appeared to me that Ms. Krafthefer's advice was intended to mislead City Council as to its rights to obtain access to legal representation for her own financial gain and benefit by claiming that she was the only individual who could provide legal services.
25. Ms. Krafthefer never offered or advised the City Council that we had the option to retain legislative counsel until I, along with two other aldermen, sent notice that we intended to do so. She then offered to help draft the ordinances.
26. When Ms. Krafthefer offered to draft the ordinances for legislative counsel, I felt it confirmed that she had not been upfront with the City Council about our legal options regarding access to attorneys. Her misrepresentation in this regard appeared to be in the sole interests of the Mayor by limiting City Council's ability to get legal advice from anyone besides her. It further appeared to serve her and her firm's own financial benefit.
27. On Sunday, February 19, 2023 at 4:24 PM, the City Clerk was directed by three aldermen to immediately post notice of a special meeting for Tuesday, February 21, 2023 at 5:30 PM. The purpose of this meeting was to discuss an ordinance for legislative counsel and was an alternative means of getting access to legal representation.
28. The Clerk did not post notice of the special meeting on the City website until the following day, February 20, 2023.
29. On the day the meeting was to be held, Ms. Krafthefer sent an email to the City Council cancelling the meeting claiming it was not timely posted. The attached **Exhibit G** is a true and accurate copy of the email received.
30. I was notified that Mayor Carter reviewed video surveillance in City Hall and he claimed the City Administrator posted notice at 5:32 PM, instead of 5:30 PM. The City Clerk then removed notice of the meeting from the City's website.
31. Neither Ms. Krafthefer nor the Clerk conferred with me prior to sending out notice that the meeting was cancelled. At this time, Ms. Krafthefer's involvement in the cancellation appeared to me to be for her own financial gain and to limit the City Council's access to legal representation other than her.

32. The meeting was postponed after Ms. Krafthefer emailed out a cancellation notice and the City Clerk removed the notice posted from the website.
33. At the February 21, 2023 City Council meeting, an attorney from Ancel Glink, Ms. Krafthefer's firm held themselves out as the acting City Attorney. Further, Mark Daniel, who explained he has worked with Ancel Glink on many occasions, now represents the Mayor.
34. During the City Council meeting, I publicly stated that I objected to the temporary appointment of Keri Krafthefer or Ancel Glink because they have a conflict of interest and cannot represent the City.
35. A motion for a vote of no confidence against the Mayor was passed on February 21, 2023 by the City Council.
36. On February 23, 2023, the City Council held another special meeting for the purpose of discussing the City's access to attorneys. During that meeting, objection was again made against Ms. Krafthefer as temporary City Attorney on the basis that she had a conflict of interest.
37. During that meeting, the City Council also discussed concerns that we had been told the City Council could not retain any attorney without approval of the Mayor, despite Ms. Krafthefer's later acknowledgement that we could.
38. Ultimately, the City Council voted unanimously to approve an ordinance allowing the City Council to retain legislative counsel and special counsel. As of the date of this affidavit, the minutes have not yet been finalized for this meeting.
39. I felt Ms. Krafthefer's representations to the City Council were intended to manipulate us into believing that we had no other legal options but to take advice from her and her firm, despite our objection that she has a conflict in advising the City due to her acknowledged representation of the Mayor and persistent attempts to further his individual interests.
40. I further am concerned that Ms. Krafthefer stated during the City Council meeting that Mayor Carter's new attorney, Mark Daniel, was also asked about the Legislative Counsel Ordinance and given an opportunity to provide his own input and proposed revisions to the City. This appears entirely inconsistent with the City Council members being told that we may only seek legal advice from Keri Krafthefer and her firm, over our objections.
41. I maintain that Keri Krafthefer and the law firm of Ancel Glink have a conflict of interest since they represent or did represent Matt Carter and further maintain that the legal advice they have purported to give as temporary city attorney appears to solely advance the individual interests of Matt Carter and expose the City of Silvis.
42. I was not advised of the instant lawsuit filed against Allison Wright or Pappas Wright, P.C. prior to its filing nor did Ms. Krafthefer ask me for any information related to the same. The matter of filing the instant litigation was never brought to the attention of the City Council nor was it ever approved by Council.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 26, 2023

A handwritten signature in black ink, appearing to read 'Tony Trulson', is written above a horizontal line.

Tony Trulson
City of Silvis Alderman, 1st Ward

**IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS**

CITY OF SILVIS, an Illinois municipal)
corporation, MATT CARTER, in his official)
capacity as Mayor of the City of Silvis, Illinois,)
and AMY MALMSTROM, in her capacity as)
City Clerk of the City of Silvis, Illinois.)

Plaintiffs,)

v.)

ALLISON WRIGHT AND PAPPAS WRIGHT,)
P.C.)

Defendants.)

No. 2023CH7

AFFIDAVIT OF ALDERMAN RICHARD LOHSE

I, RICHARD LOHSE, Affiant, under penalty of perjury pursuant to 28 U.S.C. §1746, and in support of Defendants' Response to Plaintiffs' Motion for a Temporary Restraining Order swear, affirm or depose the truth and accuracy of the following, which is information from my personal knowledge:

1. I am currently an alderman on the City of Silvis City Council.
2. In my time as alderman, the City has retained the services of various attorneys in addition to the City Attorney position.
3. Allison Wright was retained by the City Council in 2016 as an independent contractor to provide legal services to the City and has provided various legal services since that time. Several other attorneys have been retained as independent contractors, as well.
4. It is my understanding that Mayor Carter does not have the unilateral authority to fire Ms. Wright as an independent contractor of the City where her services were approved by City Council and she was not appointed by the Mayor.
5. The Mayor's alleged unilateral termination of Allison Wright is inconsistent with the manner in which the City of Silvis has operated and retained attorneys.
6. On October 18, 2022, a City employee filed a harassment complaint against another City employee, which resulted in an investigation.
7. The City directed Allison Wright to assist with the investigation. Ultimately, the accused employee was terminated by the City after he did not dispute the allegations. His termination was ultimately upheld by a unanimous vote of the City Council at the December 6, 2022 City Council meeting.
8. Over the course of the next several months following the City Council's vote to uphold the termination, there were numerous allegations from City employees claiming they were being subjected to harassment and retaliation by the Mayor for their involvement in the investigation. These complaints were brought to the Mayor's attention. Allegations

- then claimed things got worse. After such escalation, the City Council voted to go into closed session at its February 7, 2023 meeting.
9. I then requested that the Mayor and the Clerk excuse themselves from the closed session discussion since the allegations involved both of them. They left without objection.
 10. Two attorneys for the City were present during the closed session discussion to advise the Council, the then-acting City Attorney, Nick Mason and Allison Wright.
 11. During closed session, the City Council discussed the allegations, the recent developments and concerns that a claim against the City was probable or imminent. In the days leading up to the February 7th meeting, reports regarding fear to be at work had escalated.
 12. In fact, there were reports that individuals intended to retain legal counsel and file claims against the City. A full recording of closed session was kept in accordance with the Open Meetings Act.
 13. At the end of the February 7, 2023 closed session, the alderpersons determined their next step was to send a letter to the Mayor and call for his resignation.
 14. On February 14, 2023, the letter requesting Mayor Carter's resignation, signed by all eight (8) alderpersons, was delivered by an alderman to Mayor Matt Carter at City Hall.
 15. Later that same day, Mayor Carter sent a letter to Allison Wright stating he was terminating her legal services. In my opinion, the termination letter was issued in response to Ms. Wright's involvement in assisting City Council in addressing the complaints made by City employees against the Mayor as I would expect her to do as an attorney for the City.
 16. On February 15, 2023, the Mayor then sent a letter entitled "Letter to Council on legal advice" which included a case attachment. The case was Village of Westmont v. Lenihan and included the Mayor's attorney's name, Keri-Lyn Krafthefer, at the bottom center of every page. The attached **Exhibit B** is a true and correct copy of the letter received by me. The letter further stated that the Mayor had reassigned all the City's labor work to the City Attorney, Nick Mason.
 17. On February 17, 2023, I joined in calling a special meeting with Alderman Dyer and Alderman Tony Trulson, such notice was delivered to the Clerk and she was directed to post the notice. The notice included agenda items regarding a vote of no confidence in the Mayor and discussion on referring specific matters to the State's Attorney's Office.
 18. I was notified that Ms. Krafthefer claimed the agenda item regarding the State's Attorney's Office was defamation against the Mayor and directed that it not be included. I then joined in an amended call for a special meeting to include only a vote of no confidence in the Mayor. The Clerk did not post notice of the meeting that day.
 19. Also on Friday, February 17, 2023, Ms. Krafthefer emailed the entire City Council notifying all alderpersons that she was the acting City Attorney. The attached **Exhibit D** is a true and correct copy of the letter received.
 20. I believe Ms. Krafthefer and the law firm of Ancel Glink have a conflict with the City of Silvis because she stated earlier that week that she represents Mayor Matt Carter individually.
 21. On Sunday, February 19, 2023, Keri Krafthefer emailed all City Council members and stated the following, in part:
 - a. She was the acting City Attorney.
 - b. Mayor Carter had the authority to direct Ms. Wright do no further legal work.

- c. The City Code states the City's legal work is to be performed by the City Attorney.
- d. "An entire body of law" provides that the Mayor directs the City's legal work.
- e. There was no Council vote required to terminate Ms. Wright.
- f. "The City Clerk has reviewed the City Council minutes since 2016 and there is no record that the City Council ever voted to hire the labor attorney or voted to award a contract to Ms. Wright or her firm."
- g. The Lenihan case sent to the Alderpersons on Friday (2/17/23) holds "that the City Council cannot employ any attorneys to represent the City or to handle the City's legal work without the agreement of the Mayor."
- h. "The City Council cannot hire a lawyer to represent the City without the Mayor's approval."

See Exhibit F.

- 22. I was concerned with Ms. Krafthefer's communication for various reasons, including but not limited to, the fact that her statement claimed that City Council cannot hire any attorneys without the Mayor's approval.
- 23. I felt this advice was misrepresenting the legal rights of City Council.
- 24. I further felt this advice was inconsistent with the City of Silvis Municipal Code which allows the City Council to retain legal counsel.
- 25. Several hours after Ms. Krafthefer's email on February 18, 2023, Alderman Joshua Dyer, Alderman Anthony Trulson and I directed the City Clerk to post notice of a special meeting duly called for 5:30 PM on Tuesday, February 21, 2023. The purpose of the meeting was to discuss an ordinance on Legislative Counsel, which provided yet another mechanism for the City Council members to hire an attorney.
- 26. At this point in time, it appeared to me that Ms. Krafthefer was advancing the individual interests of Mayor Matt Carter.
- 27. At this point in time, it appeared to me that Ms. Krafthefer was not providing City Council members with legal options for us to obtain legal advice from anyone other than her and her firm, who have a conflict.
- 28. At this point in time, it appeared to me that Ms. Krafthefer's advice was intended to mislead City Council as to its rights to obtain access to legal representation for her own financial gain and benefit by claiming that she was the only individual who could provide legal services.
- 29. I was aware that Ms. Krafthefer serves as legislative counsel to municipalities or villages in the State of Illinois and am also aware that Ms. Krafthefer was involved in a 2017 case where the court confirmed City Council members have the right to hire legislative counsel.
- 30. Ms. Krafthefer never offered or advised the City Council that we had the option to retain legislative counsel until I, along with two other aldermen, sent notice that we intended to do so. She then offered to help draft the ordinances.
- 31. When Ms. Krafthefer offered to draft the ordinances for legislative counsel, I felt it confirmed that she had not been upfront with the City Council about our legal options regarding access to attorneys. Her misrepresentation in this regard appeared to be in the

- sole interests of the Mayor by limiting City Council's ability to get legal advice from anyone besides her. It further appeared to serve her and her firm's own financial benefit.
32. On Sunday, February 19, 2023 at 4:24 PM, the City Clerk was directed by three aldermen to immediately post notice of a special meeting for Tuesday, February 21, 2023 at 5:30 PM. The purpose of this meeting was to discuss an ordinance for legislative counsel and was an alternative means of getting access to legal representation.
 33. The Clerk did not post notice of the special meeting on the City website until the following day, February 20, 2023.
 34. On the day the meeting was to be held, Ms. Krafthefer sent an email to the City Council cancelling the meeting claiming it was not timely posted. The attached **Exhibit G** is a true and accurate copy of the email received.
 35. I was notified that Mayor Carter reviewed video surveillance in City Hall and he claimed the City Administrator posted notice at 5:32 PM, instead of 5:30 PM. The City Clerk then removed notice of the meeting from the City's website.
 36. Neither Ms. Krafthefer nor the Clerk conferred with me prior to sending out notice that the meeting was cancelled. At this time, Ms. Krafthefer's involvement in the cancellation appeared to me to be for her own financial gain and to limit the City Council's access to legal representation other than her.
 37. The meeting was postponed after Ms. Krafthefer emailed out a cancellation notice and the City Clerk removed the notice posted from the website.
 38. At 4:33 PM on February 21, 2023, the Clerk sent the meeting minutes for the February 7, 2023 meeting for review to the City Council. The City Council had less than one hour to review prior to the meeting that was originally scheduled for 5:30 PM.
 39. The draft minutes sent by the Clerk stated the following, "Alderman Rick Lohse made a motion to go into closed session to discuss ILCS 120/22 (c)(1) (2) (sic) which covers appointment, employment, compensation, discipline, performance or dismissal of specific employees and which covers pending or threatened litigation. Alderman York seconded the motion. Alderman Lohse then clarified that his motion was to have only the Aldermen and Lawyers, not the mayor or clerk. There was no vote on the motion to go into closed session or the proposed amendment."
 - a. I did not see the above language included in the minutes at the time I voted on the minutes due to the stressful circumstances presented at the February 21, 2023 meeting.
 - b. I disagree with the minutes as stated.
 - c. Specifically, I cited both (c)(1) and threatened litigation as reasons for going into closed session. Alderman York then seconded the motion and all alderpersons present consented. No objections were made that the vote did not pass. Alderman Lohse then requested that everyone except the alderpersons and the attorneys excuse themselves for the closed session. Everyone, including the Mayor and the Clerk, left without objection.
 40. The minutes drafted by the City Clerk do not accurately reflect what occurred at the February 7, 2023 meeting. Given the incredibly short turnaround time and unusual circumstances presented, I did not notice the error. I intend to move to correct the minutes at a subsequent meeting.
 41. Further, attached as **Exhibit H** are minutes, by way of example, of December 6 and December 20, 2022 meetings of the City Council.

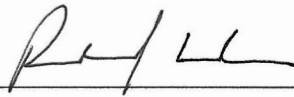
- a. It was not the customary practice of the City Clerk to record the individual votes to go into closed session.
 - b. I believe the language included in the February 7, 2023 minutes is a departure from the Clerk's customary practice and is an intentional act to misrepresent what occurred so that the minutes more closely align with the Clerk and Mayor's arguments in an effort to obtain access to the recording which involved allegations about them.
42. At the February 21, 2023 City Council meeting, an attorney from Ancel Glink, Ms. Krafthefer's firm held themselves out as the acting City Attorney. Further, Mark Daniel, who explained he has worked with Ancel Glink on many occasions, now represents the Mayor.
43. During the City Council meeting, I agreed with the objections stated on several occasions to the temporary appointment of Keri Krafthefer or Ancel Glink because they have a conflict of interest and cannot represent the City.
44. Also during the February 21, 2023 City Council meeting, several members of the public spoke during public comment. Among them was an employee who identified himself as the complainant who filed a harassment complaint on October 18, 2022, and as he shared, the complaint ultimately was found to have merit and resulted in the termination of another employee. The complainant-employee thanked the City Council for addressing the complaint and stated his opinion about the positive impact it has had on the work environment.
45. A union representative who does not work for the City also spoke. Over the course of the last several months, the City received complaints about this representative alleging she refused to represent the complainant-employee and mistreated him as a result of his harassment complaint against another member. Over the course of the last several months, concerns were also raised with the City regarding the Mayor's conduct following the harassment complaint. During the February 21, 2023 City Council meeting, the union representative accused of retaliating against the complainant-employee thanked Mayor Carter in open session for sending the termination letter regarding Allison Wright. I was deeply concerned by the union representative's acknowledgement that Mayor Carter had terminated Allison Wright because of the underlying harassment complaint, of which she was asked to investigate and advise on.
46. I saw Mayor Carter's Facebook post made days before the meeting, which acknowledged the City Council's vote of no confidence against the Mayor was related to the harassment complaint, which resulted in the termination of the respondent-employee. (See **Exhibit I**, Facebook post of Mayor Matt Carter on 2/18/23 stating the vote was based on him "disagreeing with the city council for termination of a longtime employee...") Notably, the alleged harassment was not disputed by the respondent-employee.
47. The Mayor later removed this comment and changed the post to simply read, "Thank you!" (See second page of **Exhibit I**)
48. A motion for a vote of no confidence against the Mayor was passed on February 21, 2023 by the City Council.
49. On February 23, 2023, the City Council held another special meeting for the purpose of discussing the City's access to attorneys. During that meeting, objection was again made against Ms. Krafthefer as temporary City Attorney on the basis that she had a conflict of interest.

50. During that meeting, the City Council also discussed concerns that we had been told the City Council could not retain any attorney without approval of the Mayor, despite Ms. Krafthefer's later acknowledgement that we could.
51. Ultimately, the City Council voted unanimously to approve an ordinance allowing the City Council to retain legislative counsel and special counsel. As of the date of this affidavit, the minutes have not yet been finalized for this meeting.
52. I felt Ms. Krafthefer's representations to the City Council were intended to manipulate us into believing that we had no other legal options but to take advice from her and her firm, despite our objection that she has a conflict in advising the City due to her acknowledged representation of the Mayor and persistent attempts to further his individual interests.
53. I further am concerned that Ms. Krafthefer stated during the City Council meeting that Mayor Carter's new attorney, Mark Daniel, was also asked about the Legislative Counsel Ordinance and given an opportunity to provide his own input and proposed revisions to the City. This appears entirely inconsistent with the City Council members being told that we may only seek legal advice from Keri Krafthefer and her firm, over our objections.
54. I maintain that Keri Krafthefer and the law firm of Ancel Glink have a conflict of interest since they represent or did represent Matt Carter and further maintain that the legal advice they have purported to give as temporary city attorney appears to solely advance the individual interests of Matt Carter and expose the City of Silvis.
55. I was not advised of the instant lawsuit filed against Allison Wright or Pappas Wright, P.C. prior to its filing nor did Ms. Krafthefer ask me for any information related to the same. The matter of filing the instant litigation was never brought to the attention of the City Council nor was it ever approved by Council.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 26, 2023



Richard Lohse
City of Silvis Alderman, 3rd Ward

**IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS**

CITY OF SILVIS, an Illinois municipal)
corporation, MATT CARTER, in his official)
capacity as Mayor of the City of Silvis, Illinois,)
and AMY MALMSTROM, in her capacity as)
City Clerk of the City of Silvis, Illinois.)

Plaintiffs,)

v.)

ALLISON WRIGHT AND PAPPAS WRIGHT,)
P.C.)

Defendants.)

No. 2023CH7

AFFIDAVIT OF ALLISON WRIGHT

I, Allison Wright, Affiant, under penalty of perjury pursuant to 28 U.S.C. §1746, and in support of Defendants' Response to Plaintiffs' Motion for a Temporary Restraining Order swear, affirm or depose the truth and accuracy of the following, which is information from my personal knowledge:

1. I was retained by the City of Silvis to provide legal services in 2016 and have been providing legal services to the City of Silvis since that time.
2. I attended the February 7, 2023 City Council meeting for the City of Silvis.
3. On February 10, 2023, I spoke to the then City Attorney, Nick Mason, by phone. While on the phone with him, his secretary stated to him that Keri Krafthefer was on the phone to speak with him and that she represents the Mayor for the City of Silvis.
4. Attorney Mason then told me that he and Ms. Krafthefer discussed various matters, including Ms. Krafthefer sharing opinions about City employees and referencing discipline.
5. Ms. Krafthefer then called the law firm of Pappas Wright, P.C. on February 10, 2023 and left a message stating that she was calling because she represents Mayor Matt Carter.
6. I called her back but we did not speak by phone on February 10, 2023.
7. On Monday February 13, 2023, I again called Ms. Krafthefer and left a message.
8. Later that day, I spoke with Ms. Krafthefer by phone and during that call, Ms. Krafthefer stated that she represented Mayor Matt Carter and went on to discuss various matters.
9. During that call, Ms. Krafthefer also shared an opinion about specific employees, suggesting one needed to be "put in [their] place" and arguing on behalf of the Mayor's position.
10. Ms. Krafthefer shared her opinion that the Mayor should have access to the February 7, 2023 closed session audio recording.

11. During February 13, 2023 phone call, I shared that the February 7, 2023 closed session discussion involved threatened litigation and involved allegations against the Mayor and also involved the Clerk. Ms. Krafthefer stated that any claims against the Mayor were frivolous and that it was her opinion there was no threatened litigation. I responded that the Mayor was aware of the nature of the allegations and that based upon information provided to City Council in the days leading up to the February 7, 2023 meeting, it was clear that litigation was imminent.
12. I received Mayor Carter's letter regarding termination of services on February 14, 2023.
13. I received Alderman Dyer's email on February 15, 2023 directing that I disregard the Mayor's 2/14/23 letter.
14. I also spoke to the then City Attorney Nick Mason by phone on February 15, 2023 and he shared it was his opinion that the Mayor's termination letter had no legal effect.
15. I attended the February 21, 2023 City Council meeting and heard several objections from aldermen stating they believe Ancel Glink has a conflict of interest in representing the City.
16. I do not currently have any pending matters with the City that have an urgent deadline.
17. I was retained to handle a grievance arbitration where an arbitrator was recently selected and the arbitrator's earliest offered availability, with no confirmed dates, is in June 2023.
18. Additionally, I was retained to represent the City in response to an Unfair Labor Practice Charge filed by AFSCME Council 31 with the Illinois Labor Relations Board. On February 21, 2023, the Administrative Law Judge assigned to that case issued a Recommended Order and Decision granting the City's motion to defer the Charge to the parties' grievance arbitration process referenced in paragraph 17 of this affidavit. Again, no hearing has been scheduled.
19. In the nature of my working relationship with the City, any files in my possession would also already be in the possession of the City of Silvis.
20. I provided the February 7, 2023 closed session audio recording referenced in Plaintiffs' Verified Complaint to an alderperson for the City of Silvis prior to the filing of Plaintiffs' lawsuit.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 27, 2023



Allison Wright
PAPPAS WRIGHT, P.C.